

111TH CONGRESS  
1ST SESSION

# H. R. 1983

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2009

Mr. CONYERS (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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; conformity with original intent.
- Sec. 3. Enactment of title 53, United States Code.
- Sec. 4. Conforming amendments to positive law provisions of the United States Code.
- Sec. 5. Conforming amendments to non-positive law provisions of the United States Code.
- Sec. 6. Transitional and savings provisions.
- Sec. 7. Repeals.

5 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

6 (a) PURPOSE.—The purpose of this Act is to codify certain existing laws  
7 relating to small business as a positive law title of the United States Code.

8 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws  
9 by this Act, the intent is to conform to the understood policy, intent, and  
10 purpose of Congress in the original enactments, with such amendments and  
11 corrections as will remove ambiguities, contradictions, and other imperfec-  
12 tions, in accordance with section 205(c)(1) of House Resolution No. 988,

1 93d Congress, as enacted into law by Public Law 93-554 (2 U.S.C.  
2 285b(1)).

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

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

5 **TITLE 53—SMALL BUSINESS**  
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**Subtitle IV—Miscellaneous**

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**Subtitle I—General Provisions****CHAPTER 101—DEFINITIONS AND DECLARATIONS**

Sec.

10101. Definitions.
10102. Declarations.

**3 § 10101. Definitions**

4 In this title:

5 (1) ACCREDITED LENDERS PROGRAM.—The term “accredited lenders  
6 program” means the program under section 33107 of this title.

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

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

1           (4) ADMINISTRATION.—The term “Administration” means the Small  
2 Business Administration.

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

5           (6) AGRICULTURAL COMMODITY.—The term “agricultural com-  
6 modity” has the meaning given the term in section 102 of the Agricul-  
7 tural Trade Act of 1978 (7 U.S.C. 5602).

8           (7) AGRICULTURAL ENTERPRISE.—The term “agricultural enter-  
9 prise” means a business engaged in—

10           (A) the production of food or fiber;

11           (B) ranching;

12           (C) raising of livestock;

13           (D) aquaculture; or

14           (E) any other industry related to agriculture.

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

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

21           (10) ASSOCIATION.—The term “Association” means the association  
22 of small business development centers recognized under section  
23 27102(f) of this title.

24           (11) BASE CLOSURE AREA.—The term “base closure area” has the  
25 meaning given the term in section 25301 of this title.

26           (12) BIOMASS.—

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

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

30           (i) agricultural crops;

31           (ii) trees grown for energy production;

32           (iii) wood waste and wood residues;

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

34           (v) residues;

35           (vi) fibers;

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

37           (viii) fats, oils, and greases (including recycled fats, oils,  
38 and greases).

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

40           (i) paper that is commonly recycled; or

41           (ii) unsegregated solid waste.

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

4 (14) BUNDLING OF CONTRACT REQUIREMENTS.—

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

11 (i) the diversity, size, or specialized nature of the elements  
 12 of the performance specified;

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

14 (iii) the geographical dispersion of the contract perform-  
 15 ance sites; or

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

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

20 (i) has been performed by one or more small business con-  
 21 cerns; or

22 (ii) was suitable for award to one or more small business  
 23 concerns.

24 (15) BUSINESS DEVELOPMENT PROGRAM.—The term “business de-  
 25 velopment program” means the program under division E of subtitle  
 26 II.

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

30 (17) COMPUTER CRIME.—The term “computer crime” means—

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

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

35 (18) CONTRACTING OFFICER.—The term “contracting officer” has  
 36 the meaning given the term in section 27(f) of the Office of Federal  
 37 Procurement Policy Act (41 U.S.C. 423(f)).

38 (19) CREDIT ELSEWHERE.—The term “credit elsewhere”, with re-  
 39 spect to a concern or homeowner, means sufficient credit that is avail-  
 40 able from a non-Federal source on reasonable terms and conditions  
 41 taking into consideration the prevailing rates and terms in the commu-

1 nity in or near which the concern transacts business or the homeowner  
2 resides, for similar purposes and periods of time.

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

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

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

11 (B) is a service-disabled veteran.

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

14 (23) DISADVANTAGED OWNER.—The term “disadvantaged owner”  
15 has the meaning given the term in section 23101 of this title.

16 (24) DISASTER.—

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

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

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

29 (25) DISASTER AREA.—The term “disaster area” means an area af-  
30 fected by a natural or other disaster, as determined for purposes of sec-  
31 tion 21301 or 21302 of this title, during the period of the declaration.

32 (26) DISASTER ASSISTANCE PROGRAM.—The term “disaster assist-  
33 ance program” means—

34 (A) the disaster loan program;

35 (B) the private disaster assistance program;

36 (C) the immediate disaster assistance program; and

37 (D) the expedited disaster assistance business loan guarantee  
38 program.

39 (27) DISASTER LOAN PROGRAM.—The term “disaster loan program”  
40 means the program under chapter 213.

1 (28) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term  
2 “economically disadvantaged Indian tribe” has the meaning given the  
3 term in section 23101 of this title.

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

7 (30) ENERGY MEASURE.—The term “energy measure” includes—

8 (A) solar thermal energy equipment that is—

9 (i) of the active type based on mechanically forced energy  
10 transfer;

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

13 (iii) a combination of the types described in clauses (i) and  
14 (ii);

15 (B) photovoltaic cells and related equipment;

16 (C) a product or service—

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

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

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

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

30 (F) hydroelectric power equipment;

31 (G) wind energy conversion equipment; and

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

35 (31) EXPEDITED DISASTER ASSISTANCE LOAN GUARANTEE PRO-  
36 GRAM.—The term “expedited disaster assistance loan guarantee pro-  
37 gram” means the program under chapter 219.

38 (32) EXPORT WORKING CAPITAL PROGRAM.—The term “export  
39 working capital program” means the program established under section  
40 20508 of this title.

1           (33) EXPRESS LENDER.—The term “express lender” means a lender  
2 authorized by the Administrator to participate in the express loan pro-  
3 gram.

4           (34) EXPRESS LOAN.—The term “express loan” means a loan made  
5 pursuant to section 20320 of this title in which a lender utilizes to the  
6 maximum extent practicable its own loan analyses, procedures, and  
7 documentation.

8           (35) 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           (36) FEDERAL AGENCY.—Except in subtitles III and IV:

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

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

18                     (i) the United States Postal Service; or

19                     (ii) the Government Accountability Office.

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

22           (38) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term  
23 “historically underutilized business zone” has the meaning given the  
24 term in section 25301 of this title.

25           (39) HOMEOWNER.—The term “homeowner” includes an owner or  
26 lessee of residential property (including personal property of the owner  
27 or lessee of the residential property).

28           (40) HUBZONE.—The term “HUBZone” has the meaning given the  
29 term in section 25301 of this title.

30           (41) HUBZONE PROGRAM.—The term “HUBZone program” means  
31 the program under chapter 253.

32           (42) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone  
33 small business concern” has the meaning given the term in section  
34 25301 of this title.

35           (43) IMMEDIATE DISASTER ASSISTANCE PROGRAM.—The term “im-  
36 mediate disaster assistance program” means the program under chap-  
37 ter 217.

38           (44) INDIAN RESERVATION.—

39               (A) IN GENERAL.—The term “Indian reservation” has the  
40 meaning given the term “Indian country” in section 1151 of title

41               18.



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

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

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

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

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

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

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

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

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

26 (46) MAJOR DISASTER AREA.—The term “major disaster area”  
27 means the area for which a major disaster is declared.

28 (47) MICROLOAN PROGRAM.—The term “microloan program” means  
29 the program under chapter 211.

30 (48) MILITARY DEPARTMENT.—The term “military department” has  
31 the meaning given the term in section 101 of title 10.

32 (49) NATIVE HAWAIIAN ORGANIZATION.—The term “Native Hawai-  
33 ian organization” means a community service organization serving Na-  
34 tive Hawaiians in the State of Hawaii—

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

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

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

1 (50) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—The  
2 term “new markets venture capital company program” means the pro-  
3 gram under chapter 305.

4 (51) NON-FEDERALLY REGULATED LENDER.—The term “non-feder-  
5 ally regulated lender” means a business concern (other than a small  
6 business lending company)—

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

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

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

12 (52) PREFERRED LENDER.—The term “preferred lender” means a  
13 lender participating in the preferred lenders program.

14 (53) PREFERRED LENDERS PROGRAM.—The term “preferred lenders  
15 program” means the preferred lenders program carried out under sec-  
16 tion 10332(f)(3) of this title.

17 (54) PREMIER CERTIFIED LENDERS PROGRAM.—The term “premier  
18 certified lenders program” means the program under section 33108 of  
19 this title.

20 (55) PRIME PROGRAM.—The term “PRIME program” means the  
21 program under chapter 401.

22 (56) PRIVATE DISASTER ASSISTANCE PROGRAM.—The term “private  
23 disaster assistance program” means the program under chapter 215.

24 (57) PROCURING AGENCY.—The term “procuring agency” means a  
25 Federal agency that has procurement power.

26 (58) PUBLIC OR PRIVATE ORGANIZATION FOR THE DISABLED.—The  
27 term “public or private organization for the disabled” means an organi-  
28 zation—

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

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

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

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

36 (E) that, in the production of commodities and in the provision  
37 of services during any fiscal year in which the organization re-  
38 ceived financial assistance under the general business loan pro-  
39 gram, employs disabled individuals for not less than 75 percent of  
40 the man-hours required for the production or provision of the com-  
41 modities or services.

1 (59) QUALIFIED CENSUS TRACT.—The term “qualified census tract”  
2 has the meaning given the term in section 42(d)(5)(C)(ii) of the Inter-  
3 nal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(ii)).

4 (60) QUALIFIED EMPLOYEE TRUST.—The term “qualified employee  
5 trust” has the meaning given the term in section 20509(a) of this title.

6 (61) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term  
7 “qualified HUBZone small business concern” has the meaning given  
8 the term in section 25301 of this title.

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

13 (63) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified  
14 nonmetropolitan county” has the meaning given the term in section  
15 25301 of this title.

16 (64) REDESIGNATED AREA.—The term “redesignated area” has the  
17 meaning given the term in section 25301 of this title.

18 (65) RENEWABLE ENERGY SYSTEM.—The term “renewable energy  
19 system” means a system of energy derived from—

20 (A) a wind, solar, biomass (including biodiesel), or geothermal  
21 source; or

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

24 (66) RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM.—  
25 The term “renewable fuel capital investment pilot program” means the  
26 program under chapter 307.

27 (67) RESERVIST.—The term “reservist” means a member of a re-  
28 serve component of the Armed Forces, as described in section 101 of  
29 title 10.

30 (68) SCORE.—The term “SCORE” means the volunteer program  
31 known as SCORE.

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

35 (70) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified  
36 acquisition threshold” has the meaning given the term in section 4 of  
37 the Office of Federal Procurement Policy Act (41 U.S.C. 403).

38 (71) SMALL AGRICULTURAL COOPERATIVE.—

39 (A) IN GENERAL.—The term “small agricultural cooperative”  
40 means an association (corporate or otherwise) acting pursuant to  
41 the Agricultural Marketing Act (12 U.S.C. 1141j) the size of

1 which does not exceed the size standard established by the Admin-  
2 istrator for other similar agricultural small business concerns.

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

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

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

8 (72) SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PRO-  
9 GRAM.—The term “small business competitiveness demonstration pro-  
10 gram” means the program under chapter 249.

11 (73) SMALL BUSINESS CONCERN.—

12 (A) IN GENERAL.—The term “small business concern” means  
13 a business concern (including an agricultural enterprise) that—

14 (i) is independently owned and operated; and

15 (ii) is not dominant in its field of operation.

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

20 (C) ESTABLISHMENT OF SIZE STANDARDS.—

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

26 (ii) ADDITIONAL CRITERIA.—The standards described in  
27 clause (i) may use—

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

30 (II) other appropriate factors.

31 (iii) REQUIREMENTS FOR PRESCRIPTION OF SIZE STAND-  
32 ARD.—Unless specifically authorized by statute, no Federal  
33 agency may prescribe a size standard for categorizing a busi-  
34 ness concern as a small business concern unless the proposed  
35 size standard—

36 (I) is proposed after an opportunity for public notice  
37 and comment;

38 (II) provides for determining—

39 (aa) the size of a manufacturing concern as meas-  
40 ured by the manufacturing concern’s average em-  
41 ployment based on employment during each of the

1 manufacturing concern's pay periods for the pre-  
 2 ceding 12 months;

3 (bb) the size of a business concern providing serv-  
 4 ices on the basis of the annual average gross re-  
 5 ceipts of the business concern over a period of not  
 6 less than 3 years;

7 (cc) the size of other business concerns on the  
 8 basis of data over a period of not less than 3 years;

9 or

10 (dd) other appropriate factors; and

11 (III) is approved by the Administrator.

12 (iv) FACTORS TO BE CONSIDERED.—In establishing or ap-  
 13 proving a size standard under this subparagraph, the Admin-  
 14 istrator shall—

15 (I) ensure that the size standard varies from industry  
 16 to industry to the extent necessary to reflect the dif-  
 17 fering characteristics of the various industries; and

18 (II) consider other factors that the Administrator con-  
 19 siders to be relevant.

20 (v) LISTING OF ADDITIONAL SIZE STANDARDS.—The Ad-  
 21 ministrator shall prescribe regulations to carry out this sub-  
 22 paragraph. The regulations shall include a listing of all small  
 23 business size standards prescribed by statute or by individual  
 24 Federal agencies, identifying the programs or purposes to  
 25 which the size standards apply.

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

30 (A) not less than 51 percent of which is owned by one or more  
 31 service-disabled veterans; and

32 (B) the management and daily business operations of which are  
 33 controlled by—

34 (i) one or more service-disabled veterans; or

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

37 (75) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-  
 38 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term  
 39 “small business concern owned and controlled by socially and economi-  
 40 cally disadvantaged individuals” has the meaning given the term in sec-  
 41 tion 23101 of this title.

1 (76) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VET-  
2 ERANS.—The term “small business concern owned and controlled by  
3 veterans” means a small business concern—

4 (A) not less than 51 percent of which is owned by one or more  
5 veterans; and

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

8 (77) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY  
9 WOMEN.—The term “small business concern owned and controlled by  
10 women” means a small business concern—

11 (A)(i) at least 51 percent of which is owned by one or more  
12 women; or

13 (ii) in the case of a publicly owned business, at least 51 percent  
14 of the stock of which is owned by one or more women; and

15 (B) the management and daily business operations of the busi-  
16 ness of which are controlled by one or more women.

17 (78) SMALL BUSINESS DEVELOPMENT CENTER.—The term “small  
18 business development center” means a small business development cen-  
19 ter that receives financial assistance under chapter 271.

20 (79) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—The term  
21 “small business development center program” means the small business  
22 development center program under chapter 271.

23 (80) SMALL BUSINESS INVESTMENT COMPANY PROGRAM.—The term  
24 “small business investment company program” means the program  
25 under chapter 303.

26 (81) SMALL BUSINESS LENDING COMPANY.—The term “small busi-  
27 ness lending company” means a business concern—

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

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

32 (82) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—  
33 The term “socially and economically disadvantaged individual” has the  
34 meaning given the term in section 23101 of this title.

35 (83) SOCIALLY DISADVANTAGED INDIVIDUAL.—The term “socially  
36 disadvantaged individual” has the meaning given the term in section  
37 23101 of this title.

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

1 (85) UNITED STATES.—The term “United States” includes the  
2 States, the District of Columbia, Puerto Rico, and the territories and  
3 possessions of the United States.

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

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

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

## 11 **§ 10102. Declarations**

12 All declarations of findings, purposes, or policies enacted in connection  
13 with the enactment of any source law for this title, as originally enacted,  
14 or in connection with any amendment to this title, are incorporated in this  
15 title by reference.

## 16 **CHAPTER 103—SMALL BUSINESS ADMINISTRATION**

### **Subchapter I—Organization**

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- 10303. Deputy Administrator.
- 10304. Associate Administrators.
- 10305. Personnel.
- 10306. Small Business Investment Division.
- 10307. Office of Advocacy.
- 10308. Division of Program Certification and Eligibility.
- 10309. Office of International Trade.
- 10310. Office of Rural Affairs.
- 10311. Office of Women’s Business Ownership.
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business regulatory fairness boards.
- 10313. Office of Veterans Business Development.
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- 10337. Consultation and cooperation with other Federal agencies.
- 10338. Representation of status as small business concern.
- 10339. Criminal background checks.

## 17 **Subchapter I—Organization**

### 18 **§ 10301. Establishment**

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

1 (b) INDEPENDENT ESTABLISHMENT.—The Administration shall be under  
2 the general direction and supervision of the President and shall not be affili-  
3 ated with or be within any other Federal agency.

4 (c) OFFICES.—The principal office of the Administration shall be located  
5 in the District of Columbia. The Administrator may establish such branch  
6 and regional offices in other places in the United States as the Adminis-  
7 trator may determine.

8 **§ 10302. Administrator**

9 (a) IN GENERAL.—The management of the Administration shall be vest-  
10 ed in an Administrator who shall be appointed from civilian life by the  
11 President, by and with the advice and consent of the Senate, and who shall  
12 be a person of outstanding qualifications known to be familiar and sympa-  
13 thetic with small 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 **§ 10303. Deputy Administrator**

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

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

23 **§ 10304. Associate Administrators**

24 (a) IN GENERAL.—The Administrator may appoint 5 Associate Adminis-  
25 trators (including the Associate Administrator specified in 10306 of this  
26 title) to assist in the execution of the functions vested in the Administrator.

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

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

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

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

37 (4) DUTIES.—The Associate Administrator for Veterans Business  
38 Development shall administer the Office of Veterans Business Develop-  
39 ment established under section 10313 of this title.

40 (c) ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND  
41 CAPITAL OWNERSHIP DEVELOPMENT.—



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

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

10 (3) DUTIES.—

11 (A) FORMULATION AND COORDINATION OF POLICIES.—The As-  
 12 sociate Administrator for Minority Small Business and Capital  
 13 Ownership Development shall be responsible for formulating and  
 14 coordinating policies relating to Federal assistance to small busi-  
 15 ness concerns eligible for assistance under section 20504 of this  
 16 title and small business concerns eligible to receive contracts under  
 17 the business development program.

18 (B) BUSINESS DEVELOPMENT PROGRAM.—The Associate Ad-  
 19 ministrator for Minority Small Business and Capital Ownership  
 20 Development shall be responsible to the Administrator for the for-  
 21 mulation, execution, and management of the business development  
 22 program (including the making of determinations under para-  
 23 graphs (8), (15), (16), and (17) of section 23101 of this title and  
 24 sections 23310, 23312(a)(1), and 23318(g) of this title), under  
 25 the supervision of the Administrator.

26 (d) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT  
 27 CENTERS.—

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

31 (A) report to an official who is not more than one level below  
 32 the Office of the Administrator; and

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

39 (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 Administration officials in areas served by the small business de-  
 25 velopment 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 Administration officials described in  
 30 subparagraph (A).

31 **§ 10305. Personnel**

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

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

37 (2) define their authority and duties; and

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

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

1 (1) IN GENERAL.—The Administrator may pay the transportation  
 2 expenses and per diem in lieu of subsistence expenses, in accordance  
 3 with subchapter I of chapter 57 of title 5, for travel of any individual  
 4 employed by the Administration to render temporary services not in ex-  
 5 cess of 6 months in connection with a disaster from place of appoint-  
 6 ment to, and while at, the disaster area and any other temporary posts  
 7 of duty and return on completion of the assignment.

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

12 (c) EXPERTS AND CONSULTANTS.—

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

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

20 (A) shall be without regard to the civil service and classification  
 21 laws; and

22 (B) except in the case of stenographic reporting services by an  
 23 organization, shall be without regard to section 3709 of the Re-  
 24 vised Statutes (41 U.S.C. 5).

25 (3) COMPENSATION.—An individual employed under paragraph  
 26 (1)—

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

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

33 **§ 10306. Small Business Investment Division**

34 (a) ESTABLISHMENT.—There is established in the Administration a divi-  
 35 sion to be known as the Small Business Investment Division.

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

39 (c) COMPENSATION.—The Associate Administrator shall receive com-  
 40 pensation at the rate provided by law for other Associate Administrators of  
 41 the Administration.

1    **§ 10307. Office of Advocacy**

2       (a) DEFINITIONS.—In this section:

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

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

7       (b) ESTABLISHMENT.—There is established within the Administration an  
8       Office of Advocacy.

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

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

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

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

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

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

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

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

38           (6) determine financial resource availability and recommend methods  
39      for delivery of financial assistance to minority enterprises, including  
40      methods for—

41           (A) securing equity capital;

- 1 (B) generating markets for goods and services;
- 2 (C) providing effective business education, more effective man-
- 3 agement and technical assistance, and training; and
- 4 (D) providing assistance in complying with Federal, State, and
- 5 local law;
- 6 (7) evaluate the efforts of Federal agencies, business, and industry
- 7 to assist minority business concerns;
- 8 (8) make such recommendations as may be appropriate to assist the
- 9 development and strengthening of minority and other small business
- 10 concerns;
- 11 (9)(A) recommend specific measures for creating an environment in
- 12 which all businesses will have the opportunity to compete effectively
- 13 and expand to their full potential; and
- 14 (B) ascertain the common reasons, if any, for small business suc-
- 15 cesses and failures;
- 16 (10)(A) determine the desirability of developing a set of rational, ob-
- 17 jective criteria to be used to define small business; and
- 18 (B) develop such criteria, if appropriate; and
- 19 (11)(A) evaluate the efforts of each Federal agency, and of private
- 20 industry, to assist small business concerns owned and controlled by vet-
- 21 erans and small business concerns owned and controlled by service-dis-
- 22 abled veterans;
- 23 (B) provide statistical information on the use of such programs by
- 24 small business concerns owned and controlled by veterans and small
- 25 business concerns owned and controlled by service-disabled veterans;
- 26 and
- 27 (C) make appropriate recommendations to the Administrator and to
- 28 Congress to promote the establishment and growth of small business
- 29 concerns owned and controlled by veterans and small business concerns
- 30 owned and controlled by service-disabled veterans.
- 31 (e) DUTIES TO BE PERFORMED ON A CONTINUING BASIS.—
- 32 (1) IN GENERAL.—The Chief Counsel shall perform the duties de-
- 33 scribed in this subsection on a continuing basis.
- 34 (2) COMPLAINTS, CRITICISMS, AND SUGGESTIONS.—The Chief Coun-
- 35 sel shall serve as a focal point for the receipt of complaints, criticisms,
- 36 and suggestions concerning the policies and activities of the Adminis-
- 37 tration and any other Federal agency that affects small business con-
- 38 cerns.
- 39 (3) COUNSELING.—The Chief Counsel shall counsel small business
- 40 concerns on how to resolve questions and problems concerning the rela-
- 41 tionship of the small business to the Federal Government.

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

2 (A) develop proposals for changes in the policies and activities  
3 of any Federal agency that will better fulfill the purposes of sub-  
4 title II; and

5 (B) communicate the proposals to the appropriate Federal agen-  
6 cies.

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

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

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

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

19 (f) RURAL TOURISM TRAINING PROGRAM.—In conjunction with the Of-  
20 fice of Rural Affairs and appropriate personnel designated by each district  
21 office of the Administration, the Chief Counsel shall conduct training ses-  
22 sions on the types of Federal assistance available for the development of  
23 rural small business concerns engaged in tourism and tourism-related activi-  
24 ties.

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

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

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

37 (3) consult—

38 (A) with experts and authorities in the fields of small business  
39 investment, venture capital, and investment and commercial bank-  
40 ing and with other comparable lending institutions involved in the  
41 financing of business;

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

3 (C) with individuals who generally represent the public interest;  
4 (4)(A) use the services of the National Advisory Council established  
5 under section 10315 of this title; and

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

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

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

14 (i) REPORTS.—The Chief Counsel may from time to time prepare and  
15 publish such reports as the Chief Counsel considers appropriate.

16 **§ 10308. Division of Program Certification and Eligibility**

17 (a) DEFINITIONS.—In this section:

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

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

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

25 (b) ESTABLISHMENT.—There is established in the Office of Minority  
26 Small Business and Capital Ownership Development a Division of Program  
27 Certification and Eligibility.

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

30 (d) FIELD OFFICES.—The Director shall establish field offices within  
31 such regional offices of the Administration as are necessary to perform effi-  
32 ciently the functions and responsibilities of the Director.

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

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

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

39 (3) to make recommendations on such applications to the Associate  
40 Administrator;

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

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

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

10 (7) to decide protests regarding the status of a small business con-  
 11 cern as a small business concern owned and controlled by socially and  
 12 economically disadvantaged individuals for purposes of any program or  
 13 activity conducted under chapter 243 or any other provision of Federal  
 14 law that refers to that chapter for a definition of eligibility for any pro-  
 15 gram; and

16 (8) to implement such policy directives as are issued by the Associate  
 17 Administrator under section 23326 of this title regarding, among other  
 18 things, the geographic distribution of small business concerns to be ad-  
 19 mitted to the business development program and the industrial makeup  
 20 of those small business concerns.

21 (f) DECISIONS ON PROTESTS.—

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

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

26 (B) include findings of fact and conclusions of law, with specific  
 27 reasons supporting the findings or conclusions, on each material  
 28 issue of fact and law of decisional significance regarding the dis-  
 29 position of the protest.

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

34 **§ 10309. Office of International Trade**

35 (a) DEFINITION OF OFFICE.—In this section, the term “Office” means  
 36 the Office of International Trade.

37 (b) ESTABLISHMENT OF OFFICE.—There is established within the Ad-  
 38 ministration an Office of International Trade, which shall implement the  
 39 programs under this section.

40 (c) DISTRIBUTION NETWORK; MARKETING OF PROGRAMS AND DISSEMI-  
 41 NATION OF INFORMATION; BILINGUAL JOB APPLICANTS.—



1 (1) IN GENERAL.—The Office, working in close cooperation with the  
 2 Department of Commerce and other Federal agencies, small business  
 3 development centers engaged in export promotion efforts, regional and  
 4 local Administration offices, the small business community, and State  
 5 and local export promotion programs, shall—

6 (A) assist in developing a distribution network for existing trade  
 7 promotion, trade finance, trade adjustment, trade remedy assist-  
 8 ance and trade data collection programs through use of the Ad-  
 9 ministration’s regional and local offices and the small business de-  
 10 velopment center network;

11 (B) assist in the aggressive marketing of the programs de-  
 12 scribed in subparagraph (A) and the dissemination of marketing  
 13 information, including computerized marketing data, to the small  
 14 business community; and

15 (C) give preference in hiring or approving the transfer of any  
 16 employee into the Office or to a position described in subsection  
 17 (d)(2)(H) to otherwise qualified applicants who are fluent in a lan-  
 18 guage in addition to English.

19 (2) BILINGUAL EMPLOYEES.—Bilingual employees hired or trans-  
 20 ferred under paragraph (1)(C)—

21 (A) shall accompany foreign trade missions if designated by the  
 22 director of the Office; and

23 (B) shall be available as needed to translate documents, inter-  
 24 pret conversations, and facilitate multilingual transactions includ-  
 25 ing providing referral lists for translation services if required.

26 (d) PROMOTION OF SALES OPPORTUNITIES FOR GOODS AND SERVICES  
 27 ABROAD.—

28 (1) IN GENERAL.—The Office shall promote sales opportunities for  
 29 small business goods and services abroad.

30 (2) ACTIVITIES.—To accomplish the objective stated in paragraph  
 31 (1), the Office shall—

32 (A) in cooperation with the Department of Commerce, other  
 33 Federal agencies, regional and local Administration offices, the  
 34 small business development center network, and State programs,  
 35 develop a mechanism for—

36 (i) identifying subsectors of the small business community  
 37 with strong export potential;

38 (ii) identifying areas of demand in foreign markets;

39 (iii) prescreening foreign buyers for commercial and credit  
 40 purposes; and

1 (iv) assisting in increasing international marketing by dis-  
2 seminating relevant information regarding market leads, link-  
3 ing potential sellers and buyers, and catalyzing the formation  
4 of joint ventures, where appropriate;

5 (B) in cooperation with the Department of Commerce, actively  
6 assist small business concerns in the formation and utilization of  
7 export trading companies, export management companies and re-  
8 search and development pools authorized under division H of sub-  
9 title II;

10 (C) work in conjunction with other Federal agencies, regional  
11 and local offices of the Administration, the small business develop-  
12 ment center network, and the private sector to identify and pub-  
13 licize existing translation services, including those available  
14 through colleges and universities participating in the small busi-  
15 ness development center program;

16 (D) work closely with the Department of Commerce and other  
17 relevant Federal agencies to—

18 (i)(I) collect, analyze and periodically update relevant data  
19 regarding the small business share of United States exports  
20 and the nature of State exports (including the production of  
21 Gross State Product figures); and

22 (II) disseminate those data to the public and to Congress;

23 (ii) make recommendations to the Secretary of Commerce  
24 and to Congress regarding revision of the North American In-  
25 dustry Classification System codes to encompass industries  
26 currently overlooked and to create North American Industry  
27 Classification System codes for export trading companies and  
28 export management companies;

29 (iii) improve the utility and accessibility of existing export  
30 promotion programs for small business concerns; and

31 (iv) increase the accessibility of the Export Trading Com-  
32 pany contact facilitation service of the Department of Com-  
33 merce;

34 (E) make available to the small business community information  
35 regarding conferences on exporting and international trade spon-  
36 sored by the public and private sectors;

37 (F) provide small business concerns with access to current and  
38 complete export information by—

39 (i) making available, at the Administration's regional of-  
40 fices through cooperation with the Department of Commerce,

1 export information, including the worldwide information and  
2 trade system and world trade data reports;

3 (ii) maintaining a current list of financial institutions that  
4 finance export operations;

5 (iii) maintaining a current directory of all Federal, re-  
6 gional, State and private sector programs that provide export  
7 information and assistance to small business concerns; and

8 (iv) preparing and publishing such reports as the Office de-  
9 termines to be necessary concerning market conditions,  
10 sources of financing, export promotion programs, and other  
11 information pertaining to the needs of exporting small busi-  
12 ness concerns so as to ensure that the maximum information  
13 is made available to small business concerns in a readily usa-  
14 ble form;

15 (G) in cooperation with the Department of Commerce, encour-  
16 age greater participation by small business concerns in trade fairs,  
17 shows, missions, and other domestic and overseas export develop-  
18 ment activities of the Department of Commerce; and

19 (H) facilitate decentralized delivery of export information and  
20 assistance to small business concerns by—

21 (i) assigning full-time export development specialists to  
22 each Administration regional office; and

23 (ii) assigning primary responsibility for export development  
24 to one person in each district office.

25 (3) DUTIES OF EXPORT DEVELOPMENT SPECIALISTS AND DISTRICT  
26 PERSONNEL ASSIGNED PRIMARY RESPONSIBILITY FOR EXPORT DEVEL-  
27 OPMENT.—An export development specialist assigned to an Administra-  
28 tion regional office under paragraph (2)(H)(i) and a person in a dis-  
29 trict assigned primary responsibility for export development shall—

30 (A) assist small business concerns in obtaining export informa-  
31 tion and assistance from other Federal agencies;

32 (B) maintain a current directory of all programs that provide  
33 export information and assistance to small business concerns in  
34 the region;

35 (C) encourage financial institutions to develop and expand pro-  
36 grams for export financing;

37 (D) provide advice to Administration personnel involved in  
38 granting loans, loan guarantees, and extensions and revolving lines  
39 of credit and providing other forms of assistance to small business  
40 concerns engaged in exporting; and

1 (E) within 180 days after being appointed as an export develop-  
 2 ment specialist, participate in a training program designed by the  
 3 Administrator, in conjunction with the Department of Commerce  
 4 and other Federal agencies, to study export programs and to ex-  
 5 amine the needs of small business concerns for export information  
 6 and assistance.

7 (e) ACCESS TO EXPORT AND PRE-EXPORT FINANCING PROGRAMS.—

8 (1) IN GENERAL.—The Office shall work in cooperation with the Ex-  
 9 port-Import Bank of the United States, the Department of Commerce,  
 10 other Federal agencies, and the States to develop a program through  
 11 which export specialists in the regional offices of the Administration,  
 12 regional and local loan officers, and small business development center  
 13 personnel can facilitate the access of small business concerns to rel-  
 14 evant export financing programs of the Export-Import Bank of the  
 15 United States and to export and pre-export financing programs avail-  
 16 able from the Administration and the private sector.

17 (2) ACTIVITIES.—To accomplish the goal stated in paragraph (1),  
 18 the Office shall work in cooperation with the Export-Import Bank of  
 19 the United States and the small business community, including small  
 20 business trade associations, to—

21 (A) aggressively market existing Administration export financ-  
 22 ing and pre-export financing programs;

23 (B) identify financing available under various programs of the  
 24 Export-Import Bank of the United States, and aggressively mar-  
 25 ket those programs to small business concerns;

26 (C) assist in the development of financial intermediaries and fa-  
 27 cilitate the access of those intermediaries to existing financing pro-  
 28 grams;

29 (D) promote greater participation by private financial institu-  
 30 tions, particularly those institutions already participating in loan  
 31 programs under subtitle II, in export finance; and

32 (E) provide for the participation of appropriate Administration  
 33 personnel in training programs conducted by the Export-Import  
 34 Bank of the United States.

35 (f) TRADE PROCEEDINGS.—The Office shall—

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

40 (2) work with the Department of Commerce, the Office of the United  
 41 States Trade Representative, and the International Trade Commission

1 to increase access to trade remedy proceedings for small business con-  
2 cerns.

3 **§ 10310. Office of Rural Affairs**

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

6 (b) ESTABLISHMENT OF OFFICE.—There is established in the Adminis-  
7 tration an Office of Rural Affairs.

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

10 (d) FUNCTIONS.—The Office shall—

11 (1) strive to achieve an equitable distribution of the financial assist-  
12 ance available from the Administration for small business concerns lo-  
13 cated in rural areas;

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

17 (3) provide information to industries, organizations, and State and  
18 local governments concerning the assistance available to rural small  
19 business concerns through the Administration and through other Fed-  
20 eral agencies;

21 (4) provide information to industries, organizations, educational in-  
22 stitutions, and State and local governments concerning programs ad-  
23 ministered by private organizations, educational institutions, and Fed-  
24 eral, State, and local governments that improve the economic opportu-  
25 nities of rural citizens; and

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

29 **§ 10311. Office of Women’s Business Ownership**

30 (a) DEFINITIONS.—In this section:

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

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

36 (b) ESTABLISHMENT OF OFFICE.—There is established within the Ad-  
37 ministration an Office of Women’s Business Ownership.

38 (c) ASSISTANT ADMINISTRATOR.—

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

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

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

6           (1) administer the Administration’s programs for the development of  
 7           women’s business enterprises (as defined in section 40301 of this title);

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

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

11           (B) development of management and technical skills;

12           (C) seeking Federal procurement opportunities; and

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

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

15           (4) recommend the annual administrative and program budgets for  
 16           the Office (including the budget for the women’s business center pro-  
 17           gram);

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

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

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

23           (8) implement chapter 273;

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

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

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

30           (12) advise the Administrator on appointments to the Women’s  
 31           Business Council.

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

36           **§ 10312. Small Business and Agriculture Regulatory En-**  
 37           **forcement Ombudsman; regional small business**  
 38           **regulatory fairness boards**

39           (a) DEFINITIONS.—In this section:

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

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

4           (b) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT  
5 OMBUDSMAN.—The Administrator shall designate a Small Business and Ag-  
6           riculture Regulatory Enforcement Ombudsman, who shall report directly to  
7           the Administrator, using personnel of the Administration to the extent prac-  
8           ticable.

9           (c) DUTIES.—The Ombudsman shall—

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

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

17           (i) receive comments from a small business concern regarding  
18           actions by Federal agency employees conducting compliance or en-  
19           forcement activities with respect to the small business concern;  
20           and

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

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

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

32           (A) evaluates the enforcement activities of Federal agency per-  
33           sonnel; and

34           (B) includes—

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

38           (ii) a section in which any such Federal agency may make  
39           such comments made by the Federal agency to drafts of the  
40           report as are not addressed by the Ombudsman in the final  
41           draft; and

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

4 (d) FEDERAL AGENCIES OTHER THAN THE ADMINISTRATION.—

5 (1) ACTIONS TO ENSURE COMPLIANCE.—Federal agencies other than  
6 the Administration shall assist the Ombudsman and take actions as  
7 necessary to ensure compliance with this section.

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

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

12 (1) ESTABLISHMENT.—The Administrator shall establish a small  
13 business regulatory fairness board in each regional office of the Admin-  
14 istration.

15 (2) MEMBERSHIP.—

16 (A) IN GENERAL.—A Board shall consist of 5 members who are  
17 owners, operators, or officers of small business concerns, ap-  
18 pointed by the Administrator, after receiving the recommendations  
19 of the chair and ranking minority member of the Committee on  
20 Small Business and Entrepreneurship of the Senate and the Com-  
21 mittee on Small Business of the House of Representatives.

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

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

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

29 (E) COMPENSATION.—A member of a Board shall serve without  
30 compensation, except that a member shall be allowed travel ex-  
31 penses, including per diem in lieu of subsistence, at rates author-  
32 ized for employees of agencies under subchapter I of chapter 57  
33 of title 5 while away from the home or regular place of business  
34 of the member in the performance of services for the Board.

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

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

41 (5) DUTIES.—A Board shall—



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

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

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

10 (6) POWERS.—

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

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

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

20 **§ 10313. Office of Veterans Business Development**

21 (a) DEFINITION OF ASSOCIATE ADMINISTRATOR.—In this section, the  
22 term “Associate Administrator” means the Associate Administrator for Vet-  
23 erans Business Development under section 10304(b) of this title.

24 (b) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There is estab-  
25 lished in the Administration an Office of Veterans Business Development,  
26 which shall be administered by the Associate Administrator.

27 (c) DUTIES.—The Associate Administrator—

28 (1) shall be responsible for the formulation, execution, and promotion  
29 of policies and programs of the Administration that provide assistance  
30 to small business concerns owned and controlled by veterans and small  
31 business concerns owned and controlled by service-disabled veterans;  
32 and

33 (2) shall act as an ombudsman for full consideration of veterans in  
34 all programs of the Administration.

35 **§ 10314. Task force on purchases from the blind and se-**  
36 **verely disabled**

37 (a) ESTABLISHMENT.—There is established within the Administration a  
38 task force on purchases from the blind and severely disabled.

39 (b) MEMBERSHIP.—The task force shall consist of one representative of  
40 the small business community appointed by the Administrator and one indi-  
41 vidual knowledgeable in the affairs of or experienced in the work of shel-

1 tered workshops appointed by the Executive Director of the Committee for  
 2 Purchase from the Blind and Other Severely Disabled established under the  
 3 first section of the Act of June 25, 1938 (41 U.S.C. 46).

4 (e) DUTIES.—The task force shall meet at least once every 6 months for  
 5 the purpose of—

6 (1) reviewing the award of contracts under section 25103 of this  
 7 title; and

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

#### 10 **§ 10315. Advisory committees**

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

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

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

15 (b) EXPENSES.—The Administrator shall—

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

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

#### 25 **§ 10316. Bureau of PCLP Oversight**

26 (a) ESTABLISHMENT.—There is established within the Administration a  
 27 bureau to be known as the Bureau of PCLP Oversight.

28 (b) PURPOSE.—The Bureau of PCLP Oversight shall carry out such  
 29 functions of the Administrator under section 33108(c) of this title as the  
 30 Administrator may designate.

### 31 **Subchapter II—Functions**

#### 32 **§ 10331. General powers**

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

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

1 (c) COURT PROCEEDINGS.—The Administrator may sue and be sued in  
2 any court of record of a State having general jurisdiction, or in any United  
3 States district court, and jurisdiction is conferred on a United States dis-  
4 trict court to determine such controversies without regard to the amount in  
5 controversy; but no attachment, injunction, garnishment, or other similar  
6 process, mesne or final, shall be issued against the Administrator or prop-  
7 erty of the Administration.

8 (d) LIMITATION ON ADVERTISING REQUIREMENT.—Section 3709 of the  
9 Revised Statutes (41 U.S.C. 5) shall not apply to a contract of hazard in-  
10 surance or a purchase or contract for a service or supply on account of  
11 property obtained by the Administrator as a result of a loan made under  
12 this subtitle or subtitle II or III if the premium for the insurance or the  
13 amount of the purchase or contract does not exceed \$1,000.

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

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

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

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

24 (g) INVESTIGATIONS.—

25 (1) IN GENERAL.—The Administrator may make such investigations  
26 as the Administrator considers necessary to determine whether a recipi-  
27 ent of or participant in assistance under this subtitle or subtitle II or  
28 III or any other person has engaged or is about to engage in any act  
29 or practice that constitutes or will constitute a violation of any provi-  
30 sion of this subtitle or subtitle II or III (including a regulation or order  
31 issued under this subtitle or subtitle II or III).

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

36 (3) POWERS.—For the purpose of any investigation, the Administra-  
37 tion may administer oaths and affirmations, subpoena witnesses, com-  
38 pel the attendance of witnesses, take evidence, and require the produc-  
39 tion of any records that are relevant to the inquiry. Attendance of wit-  
40 nesses and the production of any such records may be required from  
41 any place in the United States.

1 (4) CONTUMACY OR REFUSAL TO OBEY.—

2 (A) IN GENERAL.—In case of contumacy by, or refusal to obey  
3 a subpoena issued to, any person (including a recipient or partici-  
4 pant), the Administrator may invoke the aid of any court of the  
5 United States within the jurisdiction of which an investigation or  
6 proceeding is carried on, or in which the person resides or carries  
7 on business, in requiring the attendance and testimony of wit-  
8 nesses and the production of records, and the court may issue an  
9 order requiring the person to appear before the Administrator, to  
10 produce records, if so ordered, or to give testimony touching the  
11 matter under investigation.

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

17 (h) EXAMINATION AND REVIEW FEES.—

18 (1) IN GENERAL.—The Administrator may require a lender author-  
19 ized to make loans under the general business loan program, the dis-  
20 aster loan program, or the microloan program to pay examination and  
21 review fees.

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

26 (i) LOAN REQUIREMENTS RELATING TO ASSISTANCE PROVIDED TO LOAN  
27 APPLICANTS, NONEMPLOYMENT OF PERSONS ASSOCIATED WITH THE AD-  
28 MINISTRATION, AND LOAN APPLICATIONS.—No loan shall be made or equip-  
29 ment, facilities, or services furnished by the Administrator under this sub-  
30 title or subtitle II or III to any business concern unless the owners, part-  
31 ners, or officers of the business concern—

32 (1) certify to the Administrator—

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

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

38 (2) execute an agreement binding the business concern, for a period  
39 of 2 years after any assistance is rendered by the Administrator to the  
40 business concern, to refrain from employing, tendering any office or  
41 employment to, or retaining for professional services any individual

1 who, on the date on which any part of the assistance was rendered,  
2 or within one year prior to that date, served as an officer, attorney,  
3 agent, or employee of the Administrator occupying a position or engag-  
4 ing in an activity that, as determined by the Administrator, involves  
5 the exercise of discretion with respect to the granting of assistance  
6 under this subtitle or subtitle II or III; and

7 (3) furnish—

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

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

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

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

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

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

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

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

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

29 (m) **SAFE DEPOSIT BOX RENTALS.**—Subsections (a) and (b) of section  
30 3324 of title 31 shall not apply to prepayments of rentals made by the Ad-  
31 ministrator on safe deposit boxes used by the Administrator for the safe-  
32 guarding of instruments held as security for loans or for the safeguarding  
33 of other documents.

34 (n) **NONDISCRIMINATION.**—In carrying out the programs administered by  
35 the Administrator, the Administrator shall not discriminate on the basis of  
36 sex or marital status against any small business concern or other person  
37 applying for or receiving assistance from the Administration.

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

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

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

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

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

19 (2) accept gratuitous services and facilities.

20 **§ 10332. Financial management**

21 (a) ACCOUNTS.—

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

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

28 (A) submitted to the Committee on Appropriations and Com-  
 29 mittee on Small Business and Entrepreneurship of the Senate and  
 30 the Committee on Appropriations and Committee on Small Busi-  
 31 ness of the House of Representatives; and

32 (B) enacted in the manner prescribed by sections 9103 and  
 33 9104 of title 31 for wholly owned Government corporations.

34 (3) REPORTS.—As soon as possible after the beginning of each cal-  
 35 endar quarter, the Administrator shall submit to the Committee on Ap-  
 36 propriations and Committee on Small Business and Entrepreneurship  
 37 of the Senate and the Committee on Appropriations and Committee on  
 38 Small Business of the House of Representatives a report that describes  
 39 the status of each of the accounts referred to in paragraph (1).

40 (4) ISSUANCE OF NOTES.—

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

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

9 (C) INTEREST.—Notes issued under subparagraph (A) shall  
 10 bear interest at a rate fixed by the Secretary of the Treasury, tak-  
 11 ing into consideration the current average market yield of out-  
 12 standing marketable obligations of the United States having matu-  
 13 rities comparable to those of the notes issued under subparagraph  
 14 (A).

15 (D) PURCHASE BY THE SECRETARY OF THE TREASURY.—The  
 16 Secretary of the Treasury shall purchase any notes of the Admin-  
 17 istration issued under subparagraph (A), and for that purpose the  
 18 Secretary of the Treasury may use as a public debt transaction  
 19 the proceeds from the sale of any securities issued under chapter  
 20 31 of title 31, and the purposes for which such securities may be  
 21 issued under that chapter are extended to include the purchase of  
 22 notes issued under subparagraph (A).

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

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

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

34 (6) INTEREST.—

35 (A) ACTUAL INTEREST COLLECTED.—Following the close of  
 36 each fiscal year, the Administrator shall pay into the miscellaneous  
 37 receipts of the United States Treasury the actual interest that the  
 38 Administration collects during that fiscal year on all financings  
 39 made under subtitle II.

40 (B) INTEREST RECEIVED ON FINANCING FUNCTIONS.—

1 (i) IN GENERAL.—Except on loan disbursements on which  
 2 interest is paid under subparagraph (A), following the close  
 3 of each fiscal year, the Administrator shall pay into miscella-  
 4 neous receipts of the Treasury interest received by the Ad-  
 5 ministration on financing functions performed under this sub-  
 6 title, subtitle II, and divisions B and C of subtitle III if the  
 7 capital used to perform those functions originates from ap-  
 8 propriated funds.

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

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

13 (A) IN GENERAL.—The Administrator shall contribute to the  
 14 employees' compensation fund, on the basis of annual billings as  
 15 determined by the Secretary of Labor, for the benefit payments  
 16 made from the fund on account of employees engaged in carrying  
 17 out functions financed under the accounts described in paragraph  
 18 (1).

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

23 (b) FINANCIAL MANAGEMENT POWERS.—

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

27 (A) assign or sell at public or private sale, or otherwise dispose  
 28 of for cash or credit, in the discretion of the Administrator and  
 29 on such terms and conditions and for such consideration as the  
 30 Administrator determines to be reasonable, any evidence of debt,  
 31 contract, claim, personal property, or security assigned to or held  
 32 by the Administrator in connection with the payment of loans  
 33 granted under subtitle II or III; and

34 (B) collect or compromise all obligations assigned to or held by  
 35 the Administrator and all legal or equitable rights accruing to the  
 36 Administrator in connection with the payment of such loans until  
 37 such time as such obligations may be referred to the Attorney  
 38 General for suit or collection.

39 (2) ADMINISTRATION MONEYS.—



1 (A) DEPOSIT IN TREASURY.—All moneys of the Administration  
2 not otherwise employed may be deposited in the Treasury subject  
3 to check by authority of the Administrator.

4 (B) FEDERAL RESERVE BANKS.—

5 (i) IN GENERAL.—The Federal Reserve banks shall act as  
6 depositaries, custodians, and fiscal agents for the Administra-  
7 tion in the general performance of its powers under this sub-  
8 title and subtitles II and III.

9 (ii) REIMBURSEMENT.—A Federal Reserve bank, when des-  
10 ignated by the Administrator as fiscal agent for the Adminis-  
11 tration, shall be entitled to be reimbursed for all expenses in-  
12 curred as fiscal agent.

13 (C) BANKS INSURED BY FDIC.—A bank insured by the Federal  
14 Deposit Insurance Corporation, when designated by the Secretary  
15 of the Treasury, shall act as custodian and financial agent for the  
16 Administration.

17 (3) REAL PROPERTY.—

18 (A) CONVEYANCE.—The power to convey and to execute in the  
19 name of the Administrator a deed of conveyance, deed of release,  
20 assignment and satisfaction of mortgages, or any other written in-  
21 strument relating to real property or any interest in real property  
22 acquired by the Administrator under this subtitle or subtitle II or  
23 III may be exercised—

24 (i) by the Administrator; or

25 (ii) by any officer or agent appointed by the Administrator,  
26 with or without the execution of an express delegation of  
27 power or power of attorney.

28 (B) OTHER AUTHORITY.—The Administrator may deal with,  
29 complete, renovate, improve, modernize, insure, or rent, or sell for  
30 cash or credit, on such terms and conditions and for such consid-  
31 eration as the Administrator determines to be reasonable, any real  
32 property conveyed to or otherwise acquired by the Administrator  
33 in connection with the payment of loans granted under subtitle II  
34 or III.

35 (4) COLLECTIONS.—

36 (A) IN GENERAL.—The Administrator may pursue to final col-  
37 lection, by way of compromise or otherwise, all claims against  
38 third parties assigned to the Administrator in connection with  
39 loans made by the Administrator.

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

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

9 (6) ASSET SALES.—In connection with the Administrator's imple-  
 10 mentation of a program to sell to the private sector loans and other  
 11 assets held by the Administrator, the Administrator shall provide to the  
 12 Committee on Small Business and Entrepreneurship of the Senate and  
 13 the Committee on Small Business of the House of Representatives a  
 14 copy of the draft and final plans describing the sale and the anticipated  
 15 benefits resulting from the sale.

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

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

22 (2) LIMITATIONS.—

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

29 (B) FEES.—All fees due the Administrator on a guaranteed  
 30 loan shall be paid in full prior to a sale or resale under paragraph  
 31 (1).

32 (C) DISBURSEMENT.—A loan (except a loan made under section  
 33 20508 of this title) shall be fully disbursed to the borrower before  
 34 a sale or resale under paragraph (1).

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

39 (4) SECONDARY MARKET.—

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

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

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

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

10 (i) applies uniformly to both depository institutions and  
11 other lenders; and

12 (ii) specifies the terms and conditions under which such  
13 sales can be permitted, including maintenance of appropriate  
14 reserve requirements and other safeguards to protect the  
15 safety and soundness of the program.

16 (C) LONG-TERM VIABILITY.—The Administrator shall take such  
17 actions in the awarding of contracts as the Administrator con-  
18 siders necessary to ensure the continued long-term viability of the  
19 secondary market in loans, debentures, and other securities guar-  
20 anteed by the Administrator.

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

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

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

28 (d) TRUST CERTIFICATES.—

29 (1) IN GENERAL.—The Administrator may issue trust certificates  
30 representing ownership of all or a fractional part of the guaranteed  
31 portion of one or more loans guaranteed by the Administrator under  
32 subtitle II or section 33103 of this title.

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

36 (3) GUARANTEE.—

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

1 (B) LIMIT.—

2 (i) IN GENERAL.—A guarantee under subparagraph (A)  
3 shall be limited to the extent of principal and interest on the  
4 guaranteed portion of the loan or loans that compose the  
5 trust or pool.

6 (ii) PREPAYMENT.—If a loan in a trust or pool is prepaid,  
7 either voluntarily or in the event of default, the guarantee of  
8 timely payment of principal and interest on the trust certifi-  
9 cate shall be reduced in proportion to the amount of principal  
10 and interest that the prepaid loan represents in the trust or  
11 pool.

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

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

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

23 (5) FEES.—

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

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

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

34 (ii) shall be paid to the Administrator and used solely to  
35 reduce the subsidy on loans guaranteed under the general  
36 business loan program.

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

40 (D) NO PRECLUSION.—Nothing in this paragraph precludes an  
41 agent of the Administrator from collecting a fee approved by the

1 Administrator for the functions described in subsection  
2 (e)(2)(A)(ii).

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

7 (F) AGENTS.—

8 (i) IN GENERAL.—The Administrator may contract with an  
9 agent to carry out, on behalf of the Administration, the as-  
10 sessment and collection of the annual fee established under  
11 section 20314 of this title.

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

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

19 (7) EXERCISE OF OWNERSHIP RIGHTS.—No Federal, State, or local  
20 law shall preclude or limit the exercise by the Administration of its  
21 ownership rights in the portions of loans constituting the trust or pool  
22 against which a trust certificate is issued.

23 (e) CENTRAL REGISTRATION OF LOANS AND TRUST CERTIFICATES.—

24 (1) DEFINITION OF SELLER.—In this subsection, the term “seller”,  
25 with respect to a sale of a loan, does not include—

26 (A) an entity that made the loan; or

27 (B) an individual or entity that sells 3 or fewer guaranteed  
28 loans per year.

29 (2) IN GENERAL.—Under regulations prescribed by the Adminis-  
30 trator—

31 (A) the Administrator shall—

32 (i) provide for a central registration of all loans and trust  
33 certificates sold under subsections (c) and (d);

34 (ii) contract with an agent to carry out on behalf of the  
35 Administrator the central registration functions of this sec-  
36 tion and the issuance of trust certificates to facilitate pooling;  
37 and

38 (iii) prior to any sale, require the seller to disclose to a pur-  
39 chaser of the guaranteed portion of a loan guaranteed under  
40 subtitle II and to the purchaser of a trust certificate issued

1           under subsection (d) information on the terms, conditions,  
2           and yield of the instrument to be sold; and

3           (B) the Administrator may regulate brokers and dealers in  
4           guaranteed loans and trust certificates sold under subsections (c)  
5           and (d).

6           (3) AGENT.—An agent described in paragraph (2)(A)(ii)—

7           (A) shall provide a fidelity bond or insurance in such amounts  
8           as the Administrator determines to be necessary to fully protect  
9           the interest of the Government; and

10          (B) may be compensated through any of the fees assessed under  
11          this section and any interest earned on any funds collected by the  
12          agent while the funds are in the control of the agent and before  
13          the time at which the agent is contractually required to transfer  
14          the funds to the Administrator or to the holders of the trust cer-  
15          tificates, as appropriate.

16          (4) FORM OF REGISTRATION.—

17          (A) IN GENERAL.—This subsection does not preclude the use of  
18          a book-entry or other electronic form of registration for trust cer-  
19          tificates.

20          (B) BOOK-ENTRY SYSTEM.—The Administration may, with the  
21          consent of the Secretary of the Treasury, use the book-entry sys-  
22          tem of the Federal Reserve System.

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

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

33          (2) DEFERRED PARTICIPATION LOAN.—With respect to a deferred  
34          participation loan, the Administrator may, in the discretion of and pur-  
35          suant to regulations promulgated by the Administrator, authorize a  
36          participating lending institution to take action relating to loan servicing  
37          on behalf of the Administrator, including determining eligibility and  
38          creditworthiness and loan monitoring, collection, and liquidation.

39          (3) PREFERRED LENDERS PROGRAM.—

40          (A) IN GENERAL.—Under this subsection, the Administrator  
41          may carry out a preferred lenders program under which a written

1 agreement between a lender and the Administrator delegates to  
2 the lender—

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

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

11 (B) STANDARD REVIEW PROGRAM.—The Administrator shall  
12 carry out a standard review program under which, on entry into  
13 the preferred lenders program and annually or more frequently  
14 thereafter, each preferred lender's participation in the preferred  
15 lenders program is assessed, including an assessment of defaults,  
16 loans, and recoveries of loans made by the preferred lender under  
17 the general business loan program.

18 (g) FEES.—

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

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

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

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

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

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

32 (C) a fee not exceeding one percent of the amount of requested  
33 financings under chapter 303 for which the applicant requests a  
34 commitment from the Administration for funding during the fol-  
35 lowing year; and

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

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

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

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

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

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

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

13 (2) IN GENERAL.—Subject to the requirements and conditions con-  
14 tained in this subsection, on application by a small business concern  
15 that is the recipient of a loan made under subtitle II or III, the Admin-  
16 istrator may—

17 (A) undertake the small business concern’s obligation to make  
18 the required payments under the loan; or

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

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

26 (4) CONDITIONS.—The Administrator may undertake or suspend for  
27 a period of not to exceed 5 years a small business concern’s obligation  
28 under this subsection only if—

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

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

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

37 (5) EXTENSION OF TERM.—Notwithstanding section 20309 of this  
38 title, the Administrator may extend the term of a loan on which the  
39 Administrator undertakes or suspends the obligation under this sub-  
40 section for a corresponding period of time.

41 (6) AGREEMENT; REQUIRED ACTION.—



1 (A) AGREEMENT.—Before undertaking or suspending a small  
 2 business concern's obligation under this subsection, the Adminis-  
 3 trator, consistent with the purposes of this subsection, shall re-  
 4 quire the small business concern to agree in writing to repay to  
 5 the Administrator the aggregate amount of the required payments  
 6 during the period for which the obligation was undertaken or sus-  
 7 pended—

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

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

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

15 (B) REQUIRED ACTION.—In addition to requiring the small  
 16 business concern to execute the agreement described in subpara-  
 17 graph (A), the Administrator shall, before undertaking or sus-  
 18 pending the obligation, take such action, and require the small  
 19 business concern to take such action, as the Administrator con-  
 20 siders appropriate in the circumstances (including the provision of  
 21 such security as the Administrator considers necessary or appro-  
 22 priate) to ensure that the rights and interests of the lender will  
 23 be safeguarded adequately during and after the period in which  
 24 the obligation is undertaken or suspended.

25 (j) INTEREST RATE ON DEFERRED PARTICIPATION.—On purchase by the  
 26 Administrator of a deferred participation entered into under the general  
 27 business loan program or disaster loan program, the Administrator may  
 28 continue to charge a rate of interest not to exceed that initially charged by  
 29 the participating institution on the amount purchased for the remaining  
 30 term of the indebtedness.

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

37 (l) RISK MANAGEMENT DATABASE.—

38 (1) ESTABLISHMENT.—The Administrator shall establish, within the  
 39 management system for the general business loan program, disaster as-  
 40 sistance programs, and certified development company program a man-  
 41 agement information system that will generate a database capable of

1 providing timely and accurate information in order to identify loan un-  
 2 derwriting, collections, recovery, and liquidation problems.

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

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

9 (B) the identity of the borrower;

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

11 (D) the total dollar amount of Government exposure in each  
 12 loan;

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

15 (F) the principal line of business of the borrower, as identified  
 16 by North American Industry Classification System (or any suc-  
 17 cessor to that system) code;

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

20 (H) the number and amount of repurchases, losses, and recov-  
 21 eries in each program;

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

24 (J) comparisons, on the basis of loan program, lender, Adminis-  
 25 tration district and region, for all the data elements maintained;  
 26 and

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

### 31 **§ 10333. Small business economic database**

32 (a) IN GENERAL.—The Administrator shall maintain an external small  
 33 business economic database for the purpose of providing Congress and the  
 34 Administration information on the economic condition and the expansion or  
 35 contraction of the small business sector.

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

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

- 1           (2) number of business establishments and the types of such estab-  
 2           lishments such as sole proprietorships, corporations, and partnerships;  
 3           (3) number of business formations and failures;  
 4           (4) sales and new orders;  
 5           (5) back orders;  
 6           (6) investment in plant and equipment;  
 7           (7) changes in inventory and rate of inventory turnover;  
 8           (8) sources and amounts of capital investment, including debt, eq-  
 9           uity, and internally generated funds;  
 10          (9) debt-to-equity ratios;  
 11          (10) exports;  
 12          (11) number and dollar amount of mergers and acquisitions by size  
 13          of acquiring and acquired firm; and  
 14          (12) concentration ratios.

15   **§ 10334. Small business computer security and education**  
 16           **program**

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

19           (1) provide small business concerns information regarding—

20                   (A) utilization and management of computer technology;

21                   (B) computer crimes committed against small business con-  
 22                   cerns; and

23                   (C) security for computers owned or utilized by small business  
 24                   concerns;

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

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

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

33   **§ 10335. General policies governing the granting and denial**  
 34           **of applications**

35           The Administrator shall establish general policies (particularly with ref-  
 36   erence to the public interest in the granting and denial of applications for  
 37   financial assistance by the Administrator and with reference to the coordi-  
 38   nation of the functions of the Administration with other activities and poli-  
 39   cies of the Government), which shall govern the granting and denial of ap-  
 40   plications for financial assistance by the Administrator.

1 **§ 10336. Retention of records**

2 The Administrator and the Inspector General of the Administration  
3 shall—

4 (1) retain all correspondence, records of inquiries, memoranda, re-  
5 ports, books, and other records, including memoranda as to all inves-  
6 tigation conducted by or for the Administration, for a period of at  
7 least one year after the date of the record; and

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

12 **§ 10337. Consultation and cooperation with other Federal**  
13 **agencies**

14 (a) IN GENERAL.—To the extent that the Administrator considers it nec-  
15 essary to protect and preserve small business interests, the Administrator  
16 shall consult and cooperate with other Federal agencies in the formulation  
17 by the Administrator of policies affecting small business concerns.

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

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

27 **§ 10338. Representation of status as small business concern**

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

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

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

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

39 (3) a subcontract that is to be included as part or all of a goal con-  
40 tained in a subcontracting plan required under section 24303 of this  
41 title; or

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

4 **§ 10339. Criminal background checks**

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

11 **CHAPTER 105—PENALTIES**

Sec.

10501. False statement; overvaluation of security.

10502. Unlawful act by person connected with the Administration.

10503. Concealment, disposal, or conversion of property.

10504. Misrepresentation of status as small business concern.

10505. False certification of past compliance.

12 **§ 10501. False statement; overvaluation of security**

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

21 **§ 10502. Unlawful act by person connected with the Admin-**  
 22 **istration**

23 A person connected in any capacity with the Administration that—

24 (1) embezzles, abstracts, purloins, or willfully misapplies any money,  
 25 funds, security, or other thing of value, whether belonging to the Ad-  
 26 ministrator or pledged or otherwise entrusted to the Administrator;

27 (2) with intent to defraud the Administrator or any other body poli-  
 28 tic or corporate, or any individual, or to deceive any officer, auditor,  
 29 or examiner of the Administration—

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

32 (B) without being duly authorized, draws an order or issues,  
 33 puts forth, or assigns a note, debenture, bond, or other obligation,  
 34 or draft, bill of exchange, mortgage, judgment, or decree of judg-  
 35 ment;

36 (3) with intent to defraud, participates or shares in or receives di-  
 37 rectly or indirectly any money, profit, property, or benefit through any

1 transaction, loan, commission, contract, or other act of the Adminis-  
 2 trator; or

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

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

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

11 **§ 10503. Concealment, disposal, or conversion of property**

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

15 (1) shall be imprisoned not more than one year, fined not more than  
 16 \$1,000, or both; or

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

19 **§ 10504. Misrepresentation of status as small business con-  
 20 cern**

21 (a) OFFENSE.—A person that, in writing, misrepresents the status of a  
 22 concern or person as a small business concern, qualified HUBZone small  
 23 business concern, small business concern owned and controlled by socially  
 24 and economically disadvantaged individuals, or small business concern  
 25 owned and controlled by women, in order to obtain for that person or any  
 26 other person—

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

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

30 (3) a subcontract that is to be included as part or all of a goal con-  
 31 tained in a subcontracting plan required under section 24303 of this  
 32 title; or

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

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

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

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 § 10505. False certification of past compliance

11 A person that falsely certifies past compliance with the requirements of  
 12 section 23328 of this title—

13 (1) shall be imprisoned not more than 10 years, fined not more than  
 14 \$500,000 or both;

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

17 (3) shall be subject to suspension and debarment as specified in sub-  
 18 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-  
 19 ulation) on the basis that the misrepresentation indicates a lack of  
 20 business integrity that seriously and directly affects the present respon-  
 21 sibility to perform any contract awarded by the Federal Government  
 22 or a subcontract under such a contract; and

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

### 26 CHAPTER 107—PERIODIC REPORTS

Sec.

- 10701. Comprehensive annual report on the state of small business and on Administration operations.
- 10702. Annual report on expenditures.
- 10703. Annual report on secondary market operations.
- 10704. Annual report on impact of authority to impose secondary market fees.
- 10705. Annual report on needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.
- 10706. Annual report on contract bundling.
- 10707. Annual report on business development program.
- 10708. Annual report on contract participation goals.
- 10709. Annual report on cost savings from breakout procurement center representatives.
- 10710. Annual reports on SBIRs, STTRs, and the FAST program.
- 10711. Annual report on women's business center program.
- 10712. Annual report of the Office of International Trade.
- 10713. Annual report on historical trends of the small business sector.
- 10714. Biennial report on accredited lenders program.
- 10715. Annual report on premier certified lenders program.
- 10716. Annual report on foreclosure and liquidation of loans under the certified development company program.
- 10717. Reports on disaster assistance.

1    **§ 10701. Comprehensive annual report on the state of small**  
2                   **business and on Administration 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 the operations of the Administration under this  
9               subtitle and subtitle II, including the general lending, disaster relief,  
10              Government regulation relief, procurement and property disposal, re-  
11              search and development, technical assistance, dissemination of data and  
12              information, and other functions under the jurisdiction of the Adminis-  
13              tration during the previous fiscal year;

14              (3) recommendations—

15                   (A) for strengthening or improving the functions described in  
16                   paragraph (2); or

17                   (B) when necessary or desirable to implement more effectively  
18                   congressional policies and proposals, for establishing new or alter-  
19                   native programs;

20              (4) the names of the business concerns to which contracts are let  
21              and for which financing is arranged by the Administrator, including the  
22              amounts of the contracts and financings;

23              (5) the proportion of loans and other assistance under subtitle II and  
24              provided to minority small business concerns, the goals of the Adminis-  
25              trator for the next fiscal year with respect to minority small business  
26              concerns, and recommendations for improving assistance to minority  
27              small business concerns under subtitle II; and

28              (6)(A) a full and detailed account of operations under subtitle III  
29              that—

30                   (i) discloses the amount of losses sustained by the Government  
31                   as a result of such operations during the preceding fiscal year; and

32                   (ii) includes an estimate of the total losses that the Government  
33                   can reasonably expect to incur as a result of such operations dur-  
34                   ing the then-current fiscal year;

35              (B) full and detailed accounts relating to—

36                   (i) the Administrator's recommendations with respect to the fea-  
37                   sibility and organization of a small business capital bank to en-  
38                   courage private financing of small business investment companies  
39                   (as defined in section 30101 of this title) to replace Government  
40                   financing of small business investment companies;



1 (ii) the Administrator's plans to ensure the provision of small  
2 business investment company financing to all areas of the country  
3 and to all eligible small business concerns, including steps taken  
4 to accomplish that;

5 (iii) steps taken by the Administrator to maximize recoupment  
6 of Government funds incident to the inauguration and administra-  
7 tion of the small business investment company program and to en-  
8 sure compliance with statutory and regulatory standards relating  
9 to the small business investment company program;

10 (iv) an accounting by the Director of the Office of Management  
11 and Budget with respect to Federal expenditures to business by  
12 executive agencies, specifying the proportion of those expenditures  
13 going to business concerns falling above and below small business  
14 size standards applicable to small business investment companies;

15 (v) an accounting by the Secretary of the Treasury with respect  
16 to tax revenues accruing to the Government from business con-  
17 cerns, specifying the source of those revenues by concerns falling  
18 above and below the small business size standards applicable to  
19 small business investment companies;

20 (vi) an accounting by the Secretary of the Treasury with respect  
21 to tax losses and increased tax revenues related to small business  
22 investment company financing of both individual and corporate  
23 business taxpayers;

24 (vii) recommendations of the Secretary of the Treasury with re-  
25 spect to additional tax incentives to improve and facilitate the op-  
26 erations of small business investment companies and to encourage  
27 the use of their financing facilities by eligible small business con-  
28 cerns;

29 (viii) a report from the Securities and Exchange Commission  
30 enumerating actions undertaken by the Securities and Exchange  
31 Commission to simplify and minimize the regulatory requirements  
32 governing small business investment companies under the Federal  
33 securities laws and to eliminate overlapping regulation and juris-  
34 diction as between the Securities and Exchange Commission, the  
35 Administration, and other agencies of the executive branch;

36 (ix) a report from the Securities and Exchange Commission  
37 with respect to actions taken to facilitate and stabilize the access  
38 of small business concerns (as defined in section 30101 of this  
39 title) to the securities markets; and

40 (x) actions undertaken by the Securities and Exchange Commis-  
41 sion to simplify compliance by small business investment compa-

1           nies with the requirements of Investment Company Act of 1940  
 2           (15 U.S.C. 80a-1 et seq.) and to facilitate the election to be taxed  
 3           as regulated investment companies under section 851 of the Inter-  
 4           nal Revenue Code of 1986 (26 U.S.C. 851); and

5           (C) a full and detailed description or account relating to—

6                 (i) the number of small business investment companies the Ad-  
 7                 ministrators licensed under subtitle III, the number of licensees (as  
 8                 defined in section 30101 of this title) that have been placed in liq-  
 9                 uidation, and the number of licensees that have surrendered their  
 10                licenses in the previous year, identifying the amount of leverage  
 11                (as defined in section 30101 of this title) each has received and  
 12                the type of leverage instruments each has used;

13               (ii) the amount of leverage that each licensee received in the  
 14                previous year and the types of leverage instruments each licensee  
 15                used;

16               (iii) for each type of financing instrument, the sizes, geographic  
 17                locations, and other characteristics of the small business invest-  
 18                ment companies using the financing instrument, including the ex-  
 19                tent to which small business investment companies have used the  
 20                leverage from each instrument to make small business loans, eq-  
 21                uity investments, or both; and

22               (iv) the frequency with which each type of investment instru-  
 23                ment has been used in the current year and a comparison of the  
 24                current year with previous years.

25           **§ 10702. Annual report on expenditures**

26               (a) IN GENERAL.—As soon as practicable each fiscal year, the Adminis-  
 27                trator shall submit to the President a report showing as accurately as pos-  
 28                sible for the fiscal year the amount of funds appropriated to the Administra-  
 29                tion that the Administrator has expended in the conduct of each of the prin-  
 30                cipal activities of the Administration such as lending, procurement, con-  
 31                tracting, and providing technical and managerial aids.

32               (b) CONTENTS.—A report under subsection (a) shall disclose, separately  
 33                for each type of loan made under sections 20503 to 20509 of this title and  
 34                separately for all other loan programs, the number and amount of loans,  
 35                the number of applications, the total amount applied for, and the number  
 36                and amount of defaults for each type of equipment or service for which  
 37                loans are authorized by subtitle II.

38           **§ 10703. Annual report on secondary market operations**

39               (a) IN GENERAL.—Not later than March 31 of each year, the Adminis-  
 40                trator shall submit to the Committee on Small Business and Entrepreneur-  
 41                ship of the Senate and the Committee on Small Business of the House of

1 Representatives a report on the secondary market operations during the  
2 preceding calendar year.

3 (b) CONTENTS.—A report under subsection (a) shall include—

4 (1) the number and the total dollar amount of loans sold into the  
5 secondary market and the distribution of such loans by size of loan,  
6 size of lender, geographic location of lender, interest rate, maturity,  
7 lender servicing fees, whether the rate is fixed or variable, and pre-  
8 mium paid;

9 (2) the number and dollar amount of loans resold in the secondary  
10 market with a distribution by size of loan, interest rate, and premiums;

11 (3) the number and total dollar amount of pools formed;

12 (4) the number and total dollar amount of loans in each pool;

13 (5) the dollar amount, interest rate, and terms on each loan in each  
14 pool and whether the rate is fixed or variable;

15 (6) the number, face value, interest rate, and terms of the trust cer-  
16 tificates issued for each pool;

17 (7) to the maximum extent possible, the use by the lender of the pro-  
18 ceeds of sales of loans in the secondary market for additional lending  
19 to small business concerns; and

20 (8) an analysis of the information reported under paragraphs (1) to  
21 (7) to assess the access of small business concerns to capital at reason-  
22 able rates and terms as a result of secondary market operations.

23 **§ 10704. Annual report on impact of authority to impose sec-**  
24 **ondary market fees**

25 (a) DEFINITION OF SMALL BUSINESS CONCERN OWNED AND CON-  
26 TROLLED BY MINORITIES.—In this section, the term “small business con-  
27 cerns owned and controlled by minorities” includes a small business concern  
28 that is owned and controlled by individuals belonging to one of the des-  
29 ignated groups listed in subclause (1)(B) of the contract clause described  
30 in section 24301(e) of this title.

31 (b) STUDY, MONITORING, AND EVALUATION.—The Administrator shall  
32 study, monitor, and evaluate the impact of subparagraphs (A) to (E) of sec-  
33 tion 10332(d)(5) of this title on—

34 (1) the ability of small business concerns owned and controlled by  
35 minorities, small business concerns owned and controlled by women,  
36 and other small business concerns to obtain financing; and

37 (2) the effectiveness, viability, and growth of the secondary market  
38 authorized by section 10332(c) of this title.

39 (c) ANNUAL REPORTS.—

40 (1) IN GENERAL.—The Administrator shall annually submit to the  
41 Committee on Small Business and Entrepreneurship of the Senate and

1 the Committee on Small Business of the House of Representatives a  
2 report containing the Administrator's findings and recommendations on  
3 the impact described in subsection (b), specifically including changes in  
4 the interest rates on financings provided to small business concerns  
5 owned and controlled by minorities, small business concerns owned and  
6 controlled by women, and other small business concerns through the  
7 use of the secondary market.

8 (2) FINDINGS AND RECOMMENDATIONS.—The report under para-  
9 graph (1) shall state findings and recommendations separately for the  
10 ethnic and gender components of the small business concerns described  
11 in paragraph (1).

12 **§ 10705. Annual report on needs of small business concerns**  
13 **owned and controlled by veterans and small busi-**  
14 **ness concerns owned and controlled by service-**  
15 **disabled veterans**

16 (a) IN GENERAL.—The Administrator shall annually submit to the Com-  
17 mittee on Small Business and Entrepreneurship and Committee on Veterans  
18 Affairs of the Senate and the Committee on Small Business and Committee  
19 on Veterans Affairs of the House of Representatives a report on the needs  
20 of small business concerns owned and controlled by veterans and small busi-  
21 ness concerns owned and controlled by service-disabled veterans.

22 (b) CONTENTS.—A report under subsection (a) shall include information  
23 on—

24 (1)(A) the availability of Administration programs for small business  
25 concerns owned and controlled by veterans and small business concerns  
26 owned and controlled by service-disabled veterans; and

27 (B) the degree of utilization of those programs by small business  
28 concerns owned and controlled by veterans and small business concerns  
29 owned and controlled by service-disabled veterans during the preceding  
30 12-month period, including statistical information on such utilization as  
31 compared with the small business community as a whole;

32 (2) the percentage and dollar value of Federal contracts awarded to  
33 small business concerns owned and controlled by veterans and small  
34 business concerns owned and controlled by service-disabled veterans  
35 during the preceding 12-month period, based on the data collected  
36 under section 27513 of this title; and

37 (3) proposals to improve the access of small business concerns owned  
38 and controlled by veterans and small business concerns owned and con-  
39 trolled by service-disabled veterans to the assistance made available by  
40 the United States.

1 **§ 10706. Annual report on contract bundling**

2 (a) IN GENERAL.—In March of each year, using information maintained  
3 under section 25105(e) of this title, the Administrator shall submit to the  
4 Committee on Small Business and Entrepreneurship of the Senate and the  
5 Committee on Small Business of the House of Representatives a report on  
6 contract bundling.

7 (b) CONTENTS.—A report under subsection (a) shall include—

8 (1) information on the number (arranged by industrial classification)  
9 of small business concerns displaced as prime contractors as a result  
10 of the award of bundled contracts by Federal agencies; and

11 (2) a description of the activities with respect to previously bundled  
12 contracts of each Federal agency during the preceding year, includ-  
13 ing—

14 (A) information on the number and total dollar amount of all  
15 contract requirements that were bundled; and

16 (B) with respect to each bundled contract, information on—

17 (i) the justification for the bundling of contract require-  
18 ments;

19 (ii) the cost savings realized by bundling the contract re-  
20 quirements over the life of the contract;

21 (iii) the extent to which maintaining the bundled status of  
22 contract requirements is projected to result in continued cost  
23 savings;

24 (iv) the extent to which the bundling of contract require-  
25 ments complied with the procuring agency's small business  
26 subcontracting plan, including the total dollar value awarded  
27 to small business concerns as subcontractors and the total  
28 dollar value previously awarded to small business concerns as  
29 prime contractors; and

30 (v) the impact of the bundling of contract requirements on  
31 small business concerns unable to compete as prime contrac-  
32 tors for the consolidated requirements and on the industries  
33 of such small business concerns, including a description of  
34 any changes to the proportion of any such industry that is  
35 composed of small business concerns.

36 **§ 10707. Annual report on business development program**

37 (a) IN GENERAL.—Not later than April 30 of each year, the Adminis-  
38 trator shall submit to Congress a report on the business development pro-  
39 gram.

40 (b) CONTENTS.—

1 (1) NET WORTH OF PARTICIPATING INDIVIDUALS.—A report under  
2 subsection (a) shall disclose—

3 (A) the average personal net worth of individuals who own and  
4 control small business concerns that were initially certified for par-  
5 ticipation in the business development program during the imme-  
6 diately preceding fiscal year; and

7 (B) the dollar distribution of net worths, at \$50,000 increments,  
8 of all such individuals determined to be socially and economically  
9 disadvantaged.

10 (2) DESCRIPTION AND ESTIMATE OF BENEFITS AND COSTS.—A re-  
11 port under subsection (a) shall include a description and estimate of  
12 the benefits and costs that have accrued to the economy and the Gov-  
13 ernment in the immediately preceding fiscal year due to the operations  
14 of the program participants that were performing contracts awarded  
15 under the business development program.

16 (3) PROGRAM PARTICIPANTS EXITING THE PROGRAM.—

17 (A) IN GENERAL.—A report under subsection (a) shall include  
18 a compilation and evaluation of the former program participants  
19 that exited the program during the immediately preceding 3 fiscal  
20 years.

21 (B) CONTENTS.—The compilation and evaluation under sub-  
22 paragraph (A) shall—

23 (i)(I) disclose the number of former program participants  
24 that are actively engaged in business operations; and

25 (II) for those former program participants, separately de-  
26 tail the benefits and costs that have accrued to the economy  
27 during the immediately preceding fiscal year due to the oper-  
28 ations of the former program participants;

29 (ii)(I) disclose the number of former program participants  
30 that have ceased or substantially curtailed business oper-  
31 ations; and

32 (II) describe the reasons for the cessation or curtailment;  
33 and

34 (iii) disclose the number of former program participants  
35 that have been acquired by other business concerns or organi-  
36 zations owned and controlled by other than socially and eco-  
37 nomically disadvantaged individuals.

38 (4) LIST OF PROGRAM PARTICIPANTS.—A report under subsection  
39 (a) shall include a list of all program participants that participated in  
40 the program during the preceding fiscal year that discloses, by State  
41 and by Administration region, for each program participant—

- 1 (A) the name of the program participant;  
 2 (B) the race or ethnicity and gender of the disadvantaged own-  
 3 ers;  
 4 (C) the dollar value of all contracts received in the preceding  
 5 year;  
 6 (D) the dollar amount of advance payments received under con-  
 7 tracts awarded under the business development program; and  
 8 (E) a description (including (if appropriate) an estimate of the  
 9 dollar value) of all benefits received under sections 20511 and  
 10 23327 of this title during the preceding year.

11 (5) CONTRACT AND OPTION VALUE.—A report under subsection (a)  
 12 shall include the total dollar value of contracts and options awarded  
 13 under this chapter during the preceding fiscal year—

- 14 (A) expressed as an absolute amount;  
 15 (B) expressed as a percentage of total sales—  
 16 (i) of all program participants during that year; and  
 17 (ii) of program participants in each of the 9 years of pro-  
 18 gram participation; and  
 19 (C) expressed, at such dollar increments as the Administrator  
 20 considers appropriate, for each 6-digit North American Industry  
 21 Classification System code under which the contracts and options  
 22 were classified.

23 (6) ADDITIONAL RESOURCES OR AUTHORITIES.—A report under sub-  
 24 section (a) shall include a description of such additional resources or  
 25 program authorities as may be required to provide the types of services  
 26 needed over the next 2-year period to service the expected portfolio of  
 27 program participants.

28 **§ 10708. Annual report on contract participation goals**

29 (a) REPORT BY THE ADMINISTRATOR.—

- 30 (1) IN GENERAL.—The Administrator shall annually—  
 31 (A) compile and analyze the reports submitted by Federal agen-  
 32 cies under section 25106(c) of this title; and  
 33 (B) submit the reports to the President and Congress.  
 34 (2) CONTENTS.—The Administrator's submission to the President  
 35 shall include—  
 36 (A)(i) the Governmentwide goals for participation by qualified  
 37 HUBZone small business concerns, small business concerns owned  
 38 and controlled by service-disabled veterans, small business con-  
 39 cerns owned and controlled by socially and economically disadvan-  
 40 taged individuals, small business concerns owned and controlled by  
 41 women, and other small business concerns; and

- 1 (ii) the performance in attaining those goals;  
 2 (B)(i) the goals in effect for each Federal agency; and  
 3 (ii) each Federal agency's performance in attaining those goals;  
 4 (C)(i) an analysis of any failure to achieve the Governmentwide  
 5 goals or any Federal agency goals; and  
 6 (ii) the actions planned by each Federal agency and approved  
 7 by the Administrator to achieve the goals in the succeeding fiscal  
 8 year;  
 9 (D) for each Federal agency and on a Governmentwide basis,  
 10 the number and dollar value of contracts awarded to qualified  
 11 HUBZone small business concerns, small business concerns owned  
 12 and controlled by service-disabled veterans, small business con-  
 13 cerns owned and controlled by socially and economically disadvan-  
 14 taged individuals, small business concerns owned and controlled by  
 15 women, and other small business concerns through—  
 16 (i) noncompetitive negotiation;  
 17 (ii) competition restricted to small business concerns owned  
 18 and controlled by socially and economically disadvantaged in-  
 19 dividuals;  
 20 (iii) competition restricted to small business concerns; and  
 21 (iv) unrestricted competitions; and  
 22 (E) the number and dollar value of subcontracts awarded to  
 23 qualified HUBZone small business concerns, small business con-  
 24 cerns owned and controlled by service-disabled veterans, small  
 25 business concerns owned and controlled by socially and economi-  
 26 cally disadvantaged individuals, small business concerns owned  
 27 and controlled by women, and other small business concerns.  
 28 (b) REPORT BY THE PRESIDENT.—The President shall include the infor-  
 29 mation required by subsection (a) in each annual report to Congress on the  
 30 state of small business under section 45101(c) of this title.

31 **§ 10709. Annual report on cost savings from breakout pro-**  
 32 **curement center representatives**

33 The Administrator shall annually submit to Congress a report that—

- 34 (1) describes the cost savings achieved during the year covered by  
 35 the report through the efforts of breakout procurement center rep-  
 36 resentatives assigned to major procurement centers under section  
 37 25110 of this title;  
 38 (2) contains an evaluation of the extent to which competition has  
 39 been increased as a result of those efforts; and  
 40 (3) includes such other information relating to breakout procurement  
 41 center representatives as the Administrator considers appropriate.



1    **§ 10710. Annual reports on SBIRs, STTRs, and the FAST pro-**  
2                                    **gram**

3           (a) SBIR AND STTR PROGRAMS.—

4               (1) IN GENERAL.—The Administrator, not less than annually, shall  
5               submit to the Committee on Small Business and Entrepreneurship of  
6               the Senate and the Committee on Science and Committee on Small  
7               Business of the House of Representatives a report on the SBIRs (as  
8               defined in section 26101 of this title) and STTRs (as defined in section  
9               26101 of this title) of the Federal agencies and the Administrator’s in-  
10              formation and monitoring efforts relating to the SBIRs and STTRs.

11             (2) CONTENTS.—A report under paragraph (1) shall include—

12                 (A) the data on output and outcomes collected under section  
13                 26302(a)(9) and paragraphs (9) and (14) of section 26322 of this  
14                 title;

15                 (B) the number of proposals received from, and the number and  
16                 total amount of awards to, HUBZone small business concerns  
17                 under each of the SBIRs and STTRs; and

18                 (C) a description of the extent to which Federal agencies are  
19                 providing in a timely manner information needed to maintain the  
20                 database under section 26341 of this title.

21           (b) FAST PROGRAM.—The Administrator shall annually submit to the  
22           Committee on Small Business and Entrepreneurship of the Senate and the  
23           Committee on Science and Committee on Small Business of the House of  
24           Representatives a report regarding—

25               (1) the number and amount of awards provided and cooperative  
26               agreements entered into under the FAST program (as defined in sec-  
27               tion 26345 of this title) during the preceding year;

28               (2) a list of recipients under section 26345 of this title, including  
29               their location and the activities being performed with the awards made  
30               or under the cooperative agreements entered into; and

31               (3) the mentoring networks and the mentoring database, as provided  
32               for under section 26345(f) of this title, including—

33                     (A) the status of the inclusion of mentoring information in the  
34                     database required by section 26341 of this title; and

35                     (B) the status of the implementation and description of the  
36                     usage of the mentoring networks.

37    **§ 10711. Annual report on women’s business center program**

38           (a) IN GENERAL.—The Administrator shall annually submit to the Com-  
39           mittee on Small Business and Entrepreneurship of the Senate and the Com-  
40           mittee on Small Business of the House of Representatives a report on the  
41           effectiveness of all projects conducted under chapter 273.

1 (b) CONTENTS.—A report under subsection (a) shall include information  
2 concerning, with respect to each women’s business center—

3 (1) the number of individuals receiving assistance;

4 (2) the number of startup business concerns formed;

5 (3) the gross receipts of assisted business concerns;

6 (4) the employment increases or decreases of assisted business con-  
7 cerns;

8 (5) to the maximum extent practicable, increases or decreases in  
9 profits of assisted business concerns; and

10 (6) the most recent analysis and determination made by the Admin-  
11 istrator under section 27307(a)(2) of this title.

12 **§ 10712. Annual report of the Office of International Trade**

13 The Office of International Trade shall annually submit to the Committee  
14 on Small Business and Entrepreneurship of the Senate and the Committee  
15 on Small Business of the House of Representatives a report that describes  
16 the progress that the Office of International Trade has made in carrying  
17 out section 10309.

18 **§ 10713. Annual report on historical trends of the small busi-  
19 ness sector**

20 The Administrator shall publish annually a report giving a comparative  
21 analysis and interpretation of the historical trends of the small business sec-  
22 tor as reflected by the data acquired under section 10333 of this title.

23 **§ 10714. Biennial report on accredited lenders program**

24 The Administrator shall biennially submit to the Committee on Small  
25 Business and Entrepreneurship of the Senate and the Committee on Small  
26 Business of the House of Representatives a report on the implementation  
27 of section 33107 of this title that includes data on the number of qualified  
28 development companies (as defined in section 33101 of this title) designated  
29 as accredited lenders, their debenture guarantee volume, their loss rates, the  
30 average processing time on their guarantee applications, and such other in-  
31 formation as the Administrator considers appropriate.

32 **§ 10715. Annual report on premier certified lenders program**

33 (a) IN GENERAL.—The Administration shall annually submit to the Com-  
34 mittee on Small Business and Entrepreneurship of the Senate and the Com-  
35 mittee on Small Business of the House of Representatives a report on the  
36 implementation of section 33108 of this title.

37 (b) CONTENTS.—A report under subsection (a) shall include—

38 (1) the number of certified development companies designated as  
39 premier certified lenders;

40 (2) the debenture guarantee volume of those certified development  
41 companies;

1           (3) a comparison of the loss rate of premier certified lenders with  
 2           the loss rate of accredited lenders under section 33107 of this title and  
 3           the loss rate of other certified development companies under chapter  
 4           331, specifically comparing default rates and recovery rates on liquida-  
 5           tions; and

6           (4) such other information as the Administrator considers appro-  
 7           priate.

8       **§10716. Annual report on foreclosure and liquidation of**  
 9           **loans under the certified development company**  
 10           **program**

11       (a) IN GENERAL.—Based on information provided by qualified develop-  
 12       ment companies (as defined in section 33101 of this title) and the Adminis-  
 13       tration, the Administrator shall annually submit to the Committee on Small  
 14       Business and Entrepreneurship of the Senate and the Committee on Small  
 15       Business of the House of Representatives a report on the results of delega-  
 16       tion of authority under section 33109 of this title.

17       (b) CONTENTS.—A report under subsection (a)—

18           (1) shall disclose, with respect to each loan foreclosed or liquidated  
 19           by a qualified development company under section 33109 of this title,  
 20           or for which losses were otherwise mitigated by the qualified develop-  
 21           ment company pursuant to a workout plan under that section—

22               (A) the total cost of the project financed with the loan;

23               (B) the total original dollar amount guaranteed by the Adminis-  
 24               trator;

25               (C) the total dollar amount of the loan at the time of liquida-  
 26               tion, foreclosure, or mitigation of loss;

27               (D) the total dollar losses resulting from the liquidation, fore-  
 28               closure, or mitigation of loss; and

29               (E) the total recoveries resulting from the liquidation, fore-  
 30               closure, or mitigation of loss, both as a percentage of the amount  
 31               guaranteed and the total cost of the project financed;

32           (2) shall disclose, with respect to each qualified development com-  
 33           pany to which authority is delegated under section 33109 of this title,  
 34           the totals of each of the amounts described in subparagraphs (A) to  
 35           (E) of paragraph (1);

36           (3) shall disclose, with respect to all loans subject to foreclosure, liq-  
 37           uidation, or mitigation under section 33109 of this title, the totals of  
 38           each of the amounts described in subparagraphs (A) to (E) of para-  
 39           graph (1);

40           (4) include a comparison between—

1 (A) the information provided under paragraph (3) with respect  
2 to the 12-month period preceding the date on which the report is  
3 submitted; and

4 (B) the same information with respect to loans foreclosed and  
5 liquidated, or otherwise treated, by the Administrator during the  
6 same period; and

7 (5)(A) shall disclose the number of times that the Administrator has  
8 failed to—

9 (i) approve or reject a liquidation plan in accordance with sub-  
10 paragraph (A)(ii) or a workout plan in accordance with subpara-  
11 graph (C)(ii) of section 33109(c)(2) of this title; or

12 (ii) approve or deny a request for purchase of indebtedness  
13 under section 33109(c)(2)(B)(ii) of this title; and

14 (B) include specific information regarding—

15 (i) the reasons for the Administrator's failure; and

16 (ii) any delays that resulted.

17 **§ 10717. Reports on disaster assistance**

18 (a) DEFINITIONS.—In this section:

19 (1) MAJOR DISASTER UPDATE PERIOD.—The term “major disaster  
20 update period”, with respect to a major disaster, means the period be-  
21 ginning on the date on which the President declares the major disaster  
22 (including any major disaster relating to which the Administrator de-  
23 clares eligibility for additional disaster assistance under 21308 of this  
24 title) and ending on the date on which the declaration terminates.

25 (2) STATE.—The term “State” means a State of the United States,  
26 the District of Columbia, Puerto Rico, the Northern Mariana Islands,  
27 the Virgin Islands, Guam, American Samoa, and any territory or pos-  
28 session of the United States.

29 (b) MONTHLY ACCOUNTING REPORTS FOR MAJOR DISASTERS.—

30 (1) REPORTING REQUIREMENTS.—Not later than the fifth business  
31 day of each month during the applicable period for a major disaster,  
32 the Administrator shall submit to the Committee on Small Business  
33 and Entrepreneurship and Committee on Appropriations of the Senate  
34 and the Committee on Small Business and Committee on Appropria-  
35 tions of the House of Representatives a report on the operation of the  
36 disaster assistance programs for that major disaster during the pre-  
37 ceding month.

38 (2) CONTENTS.—A report under paragraph (1) shall include—

39 (A)(i) the daily average lending volume, in number of loans and  
40 dollars, of each category of loan; and

1 (ii) the percentage by which each category has increased or de-  
2 creased since the previous report;

3 (B)(i) the weekly average lending volume, in number of loans  
4 and dollars, of each category of loan; and

5 (ii) the percentage by which each category has increased or de-  
6 creased since the previous report;

7 (C)(i) the amount of funding spent over the month for each cat-  
8 egory of loan, both in amount of appropriations and in program  
9 level; and

10 (ii) the percentage by which each category has increased or de-  
11 creased since the previous report;

12 (D)(i) the amount of funding available for loans, in amount of  
13 appropriations and in program level, for each category of loan; and

14 (ii) the percentage by which each category has increased or de-  
15 creased since the previous report, noting the source of any addi-  
16 tional funding;

17 (E) an estimate of how long the available funding for loans will  
18 last, based on the spending rate;

19 (F)(i) the amount of funding spent over the month for staff en-  
20 gaged in the operation of the disaster assistance programs;

21 (ii) the number of staff engaged in the operation of the disaster  
22 assistance programs; and

23 (iii) the percentage by which the funding and number of staff  
24 engaged in the operation of the disaster assistance programs have  
25 increased or decreased since the previous report;

26 (G)(i) the amount of funding spent over the month for adminis-  
27 trative costs of the disaster assistance programs; and

28 (ii) the percentage by which spending for those administrative  
29 costs has increased or decreased since the previous report;

30 (H)(i) the amount of funding available for salaries and expenses  
31 combined for operation of the disaster assistance programs; and

32 (ii) the percentage by which that funding has increased or de-  
33 creased since the previous report, noting the source of any addi-  
34 tional funding; and

35 (I) an estimate of how long the available funding for those sala-  
36 ries and expenses will last, based on the spending rate.

37 (e) WEEKLY DISASTER UPDATES FOR MAJOR DISASTERS.—

38 (1) IN GENERAL.—Each week during a major disaster update period,  
39 the Administrator shall submit to the Committee on Small Business  
40 and Entrepreneurship of the Senate and the Committee on Small Busi-

1           ness of the House of Representatives a report on the operation of the  
2           disaster assistance programs for the major disaster area.

3           (2) CONTENTS.—A report under paragraph (1) shall include—

4                 (A)(i) the number of Administration staff performing loan pro-  
5                 cessing, field inspection, and other duties for the major disaster;  
6                 and

7                 (ii) the allocations of the staff in the disaster field offices, dis-  
8                 aster recovery centers, workshops, and other Administration of-  
9                 fices nationwide;

10                (B)(i) the daily number of applications received from applicants  
11                in the major disaster area; and

12                (ii) a breakdown of that number by State;

13                (C)(i) the daily number of applications pending application  
14                entry from applicants in the major disaster area; and

15                (ii) a breakdown of that number by State;

16                (D)(i) the daily number of applications withdrawn by applicants  
17                in the major disaster area; and

18                (ii) a breakdown of that number by State;

19                (E)(i) the daily number of applications summarily declined by  
20                the Administrator from applicants in the major disaster area; and

21                (ii) a breakdown of that number by State;

22                (F)(i) the daily number of applications declined by the Adminis-  
23                trator from applicants in the major disaster area; and

24                (ii) a breakdown of that number by State;

25                (G)(i) the daily number of applications in process from appli-  
26                cants in the major disaster area; and

27                (ii) a breakdown of that number by State;

28                (H)(i) the daily number of applications approved by the Admin-  
29                istrator from applicants in the major disaster area; and

30                (ii) a breakdown of that number by State;

31                (I)(i) the daily dollar amount of applications approved by the  
32                Administrator from applicants in the major disaster area; and

33                (ii) a breakdown of that number by State;

34                (J)(i) the daily number of loans disbursed, both partially and  
35                fully, by the Administrator to applicants in the major disaster  
36                area; and

37                (ii) a breakdown of that number by State;

38                (K)(i) the daily dollar amount of loans disbursed, both partially  
39                and fully, to applicants in the major disaster area; and

40                (ii) a breakdown of that number by State;

1 (L)(i) the number of applications approved, including dollar  
 2 amount approved, and applications partially and fully disbursed,  
 3 including dollar amounts, since the last report under paragraph  
 4 (1); and

5 (M)(i) the declaration date, physical damage closing date, and  
 6 economic injury closing date for the major disaster; and

7 (ii) the number of counties in the major disaster area.

8 (d) PERIODS WHEN ADDITIONAL DISASTER ASSISTANCE IS MADE  
 9 AVAILABLE.—

10 (1) IN GENERAL.—During any period for which the Administrator  
 11 declares eligibility for additional disaster assistance under section  
 12 21308 of this title, the Administrator shall, on a monthly basis, submit  
 13 to the Committee on Small Business and Entrepreneurship of the Sen-  
 14 ate and the Committee on Small Business of the House of Representa-  
 15 tives a report on the disaster assistance operations of the Adminis-  
 16 trator with respect to the applicable major disaster.

17 (2) CONTENTS.—A report under paragraph (1) shall specify—

18 (A) the number of applications for disaster assistance distrib-  
 19 uted;

20 (B) the number of applications for disaster assistance received;

21 (C) the average time for the Administrator to approve or dis-  
 22 approve an application for disaster assistance;

23 (D) the number of disaster loans approved;

24 (E) the average time for initial disbursement of disaster loan  
 25 proceeds; and

26 (F) the dollar amount of disaster loan proceeds disbursed.

27 (e) NOTICE OF NEED FOR SUPPLEMENTAL FUNDS.—On the date on  
 28 which the Administrator notifies any committee of the Senate or the House  
 29 of Representatives that supplemental funding is necessary for the disaster  
 30 assistance programs in any fiscal year, the Administrator shall notify in  
 31 writing the Committee on Small Business and Entrepreneurship of the Sen-  
 32 ate and the Committee on Small Business of the House of Representatives  
 33 regarding the need for supplemental funds for the disaster assistance pro-  
 34 grams.

35 (f) REPORT ON CONTRACTING.—

36 (1) IN GENERAL.—Not later than 6 months after the date on which  
 37 the President declares a major disaster, and every 6 months thereafter  
 38 until the date that is 18 months after the date on which the major dis-  
 39 aster is declared, the Administrator shall submit to the Committee on  
 40 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 the Administration for the fiscal year.

19 (2) CONTENTS.—A report under paragraph (1) shall—

20 (1) specify the number of Administration personnel involved in dis-  
21 aster assistance operations;

22 (2) describe any material changes to disaster assistance operations,  
23 such as changes to technologies used or to personnel responsibilities;

24 (3) describe and assess the effectiveness of the Administrator in re-  
25 sponding to disasters during the fiscal year, including a description of  
26 the number and dollar amounts of loans made for damage and for eco-  
27 nomic injury; and

28 (4) describe the plans of the Administrator for preparing to respond  
29 to disasters during the next fiscal year.

## 30 **CHAPTER 109—FUNDING**

Sec.

10901. Commitments in full amounts provided by law.

10902. Program levels.

10903. Authorization of appropriations.

### 31 **§ 10901. Commitments in full amounts provided by law**

32 (a) IN GENERAL.—Notwithstanding any other provision of law, the Ad-  
33 ministrator shall enter into commitments for direct loans and to guarantee  
34 loans, debentures, payment of rentals, or other amounts due under qualified  
35 contracts and other types of financial assistance, and enter into commit-  
36 ments to purchase debentures and preferred securities and to guarantee  
37 sureties against loss pursuant to programs under subtitles II and III, in the  
38 full amounts provided by law subject only to—



1 (1) the availability of qualified applications; and

2 (2) limitations contained in appropriations Acts.

3 (b) EFFECT OF SECTION.—Nothing in this section authorizes the Admin-  
4 istrator to reduce or limit the authority of the Administrator to enter into  
5 a commitment described in subsection (a).

6 (c) MULTIPLE FISCAL YEARS.—Subject to approval in appropriations  
7 Acts, amounts authorized for preferred securities, debentures, or partici-  
8 pating securities under chapter 303 may be obligated in one fiscal year and  
9 disbursed or guaranteed in any one or more of the 4 subsequent fiscal years.

10 **§ 10902. Program levels**

11 (a) FISCAL YEAR 2005.—The following program levels are authorized for  
12 fiscal year 2005:

13 (1) For the programs authorized by this subtitle and subtitle II, the  
14 Administrator may make—

15 (A) \$75,000,000 in technical assistance grants, as provided in  
16 chapter 211; and

17 (B) \$105,000,000 in direct loans, as provided in chapter 211.

18 (2) For the programs authorized by this subtitle and subtitle II, the  
19 Administrator may make \$23,050,000,000 in deferred participation  
20 loans and other financings. Of that sum, the Administrator may  
21 make—

22 (A) \$16,500,000,000 in general business loans, as provided in  
23 division B of subtitle II;

24 (B) \$6,000,000,000 in certified development company  
25 financings, as provided in section 20507 of this title and chapter  
26 331;

27 (C) \$500,000,000 in loans, as provided in section 20512 of this  
28 title; and

29 (D) \$50,000,000 in loans, as provided in chapter 211.

30 (3) For the programs authorized by chapter 303, the Administrator  
31 may make—

32 (A) \$4,250,000,000 in purchases of participating securities; and

33 (B) \$3,250,000,000 in guarantees of debentures.

34 (4) For the programs authorized by chapter 321, the Administrator  
35 may enter into guarantees not to exceed \$6,000,000,000, of which not  
36 more than 50 percent may be in bonds approved under section  
37 32102(a)(4) of this title.

38 (5) The Administrator may make grants or enter into cooperative  
39 agreements for a total amount of \$7,000,000 for SCORE.

40 (b) FISCAL YEAR 2006.—The following program levels are authorized for  
41 fiscal year 2006:

1 (1) For the programs authorized by this subtitle and subtitle II, the  
2 Administrator may make—

3 (A) \$80,000,000 in technical assistance grants, as provided in  
4 chapter 211; and

5 (B) \$110,000,000 in direct loans, as provided in chapter 211.

6 (2) For the programs authorized by this subtitle and subtitle II, the  
7 Administrator may make \$25,050,000,000 in deferred participation  
8 loans and other financings. Of that sum, the Administrator may  
9 make—

10 (A) \$17,000,000,000 in general business loans, as provided in  
11 division B of subtitle II;

12 (B) \$7,500,000,000 in certified development company  
13 financings, as provided in section 20507 of this title and chapter  
14 331;

15 (C) \$500,000,000 in loans, as provided in section 20512 of this  
16 title; and

17 (D) \$50,000,000 in loans, as provided in chapter 211.

18 (3) For the programs authorized by chapter 303, the Administrator  
19 may make—

20 (A) \$4,500,000,000 in purchases of participating securities; and

21 (B) \$3,500,000,000 in guarantees of debentures.

22 (4) For the programs authorized by chapter 321, the Administrator  
23 may enter into guarantees not to exceed \$6,000,000,000, of which not  
24 more than 50 percent may be in bonds approved under section  
25 32102(a)(4) of this title.

26 (5) The Administrator may make grants or enter into cooperative  
27 agreements for a total amount of \$7,000,000 for SCORE.

28 (e) AMOUNT OF DEFERRED PARTICIPATION LOANS.—Except as may be  
29 otherwise specifically provided by law, the amount of deferred participation  
30 loans authorized in this section—

31 (1) means the net amount of the loan principal guaranteed by the  
32 Administrator and does not include any amount that is not guaranteed;  
33 and

34 (2) shall be available for a national program, except that the Admin-  
35 istrator may use not more than an amount equal to 10 percent of the  
36 amount authorized each year for any special or pilot program directed  
37 to identified sectors of the small business community or to specific geo-  
38 graphic regions of the United States.

1 **§ 10903. Authorization of appropriations**

2 (a) CERTAIN ADMINISTRATIVE EXPENSES.—For each fiscal year, there  
3 are authorized to be appropriated such sums as are necessary, to remain  
4 available until expended—

5 (1) to carry out the small business development center program, but  
6 not to exceed the annual funding level specified in section 27102 of this  
7 title;

8 (2) to pay the expenses of the National Small Business Development  
9 Center Advisory Board under section 27109 of this title;

10 (3) to pay the expenses of the information sharing system under sec-  
11 tion 27104(j) of this title;

12 (4) to pay the expenses of the Association for conducting the accredi-  
13 tation program under section 27111 of this title;

14 (5) to pay the expenses of the Administration, including salaries of  
15 examiners, for conducting examinations as part of the accreditation  
16 program conducted by the Association; and

17 (6) to pay for small business development center grants as directed  
18 by Congress.

19 (b) PROGRAMS FOR WHICH PROGRAM LEVELS ARE ESTABLISHED  
20 UNDER SECTION 10902.—

21 (1) IN GENERAL.—There are authorized to be appropriated to the  
22 Administration for each of fiscal years 2005 and 2006 such sums as  
23 are necessary to carry out—

24 (A) the provisions of this subtitle and subtitle II not elsewhere  
25 provided for (including salaries and expenses of the Administration  
26 and necessary loan capital for loans under the disaster loan pro-  
27 gram); and

28 (B) subtitle III.

29 (2) LIMITATIONS.—Notwithstanding any other provision of this sub-  
30 section, for each of fiscal years 2005 and 2006, respectively—

31 (A) no funds are authorized to be used as loan capital for the  
32 loan program authorized by section 20512 of this title except by  
33 transfer from another Federal agency to the Administration, un-  
34 less the program level authorized for general business loans under  
35 subsection (a)(2)(A) or (b)(2)(A) of section 10902 of this title is  
36 fully funded; and

37 (B) the Administrator may not approve loans on behalf of the  
38 Administration or on behalf of any other Federal agency, by con-  
39 tract or otherwise, under terms or conditions other than those spe-  
40 cifically authorized under this subtitle or subtitle II or III, except

1           that the Administrator may approve loans under section 20512 of  
2           this title in gross amounts of not more than \$2,000,000.

3           (c) OFFICE OF ADVOCACY.—There is authorized to be appropriated to  
4 carry out section 10307 of this title \$1,000,000, to remain available until  
5 expended.

6           (d) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There are author-  
7 ized to be appropriated to carry out section 10313 of this title—

8                 (1) \$1,500,000 for fiscal year 2005; and

9                 (2) \$2,000,000 for fiscal year 2006.

10          (e) LOSSES AND INTEREST SUBSIDIES.—There are authorized to be ap-  
11 propriated for each fiscal year such sums as are necessary for losses and  
12 interest subsidies incurred by the accounts referred to in section  
13 10332(a)(1) of this title.

14          (f) HUBZONE PROGRAM.—There is authorized to be appropriated to  
15 carry out chapter 253 \$10,000,000 for each of fiscal years 2004 through  
16 2006.

17          (g) FAST PROGRAM.—

18                 (1) IN GENERAL.—There is authorized to be appropriated to carry  
19 out the FAST program (including mentoring networks) under section  
20 26345 of this title \$10,000,000 for each of fiscal years 2001 through  
21 2005.

22                 (2) MENTORING DATABASE.—Of the total amount made available  
23 under paragraph (1) for fiscal years 2001 through 2005, a reasonable  
24 amount, not to exceed a total of \$500,000, may be used by the Admin-  
25 istrator to carry out section 26345(f)(3) of this title.

26          (h) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—There are au-  
27 thorized to be appropriated to carry out chapter 271—

28                 (1) \$130,000,000 for fiscal year 2005; and

29                 (2) \$135,000,000 for fiscal year 2006.

30          (i) NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.—

31                 (1) IN GENERAL.—Subject to paragraph (2), there are authorized to  
32 be appropriated to the National Veterans Business Development Cor-  
33 poration to carry out section 27514 of this title—

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

35                         (B) \$4,000,000 for fiscal year 2002;

36                         (C) \$2,000,000 for fiscal year 2003; and

37                         (D) \$2,000,000 for fiscal year 2004.

38                 (2) MATCHING REQUIREMENT.—

39                         (A) FISCAL YEAR 2002.—The amount made available to the Na-  
40 tional Veterans Business Development Corporation for fiscal year  
41 2002 may not exceed twice the amount that the Corporation cer-

1           tifies that it will provide for that fiscal year from sources other  
2           than the Federal Government.

3           (B) SUBSEQUENT FISCAL YEARS.—The amount made available  
4           to the National Veterans Business Development Corporation for  
5           fiscal year 2003 or 2004 may not exceed the amount that the Cor-  
6           poration certifies that it will provide for that fiscal year from  
7           sources other than the Federal Government.

8           (3) PRIVATIZATION.—The National Veterans Business Development  
9           Corporation shall institute and implement a plan to raise private funds  
10          and become a self-sustaining corporation.

11          (j) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—There is au-  
12          thorized to be appropriated to carry out section 29102 of this title  
13          \$6,600,000 for each of fiscal years 2001 through 2006, to remain available  
14          until expended.

15          (k) PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.—

16           (1) IN GENERAL.—There is authorized to be appropriated to carry  
17           out section 29104 of this title (other than section 29104(b)(2) of this  
18           title) \$5,000,000 for each of fiscal years 2005 and 2006. Amounts  
19           made available under this paragraph shall remain available until ex-  
20           pended.

21           (2) SMALL BUSINESS DEVELOPMENT CENTERS.—Of the total  
22           amount made available under paragraph (1) for each of fiscal years  
23           2005 and 2006, not more than the greater of 10 percent or \$500,000  
24           may be used to carry out section 27104(b)(20) of this title.

25           (3) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE  
26           GRANTS.—There are authorized to be appropriated to carry out section  
27           29104(b)(2) of this title \$1,500,000 for each of fiscal years 2005 and  
28           2006. Amounts made available under this paragraph shall remain avail-  
29           able until expended.

30           (4) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 per-  
31           cent of the total amount made available under this subsection for any  
32           fiscal year shall be used for administrative costs (determined without  
33           regard to the administrative costs of eligible intermediaries).

34          (l) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—

35           (1) IN GENERAL.—There are authorized to be appropriated for fiscal  
36           years 2001 through 2006, to remain available until expended, the fol-  
37           lowing sums:

38           (A) Such subsidy budget authority as is necessary to guarantee  
39           \$150,000,000 of debentures under chapter 305.

40           (B) \$30,000,000 to make grants under chapter 305.

1 (2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited  
 2 under section 30512(d) of this title are authorized to be appropriated  
 3 only for the costs of examinations under section 30512 of this title and  
 4 for the costs of other oversight activities with respect to the new mar-  
 5 kets venture capital company program.

6 (m) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY PROGRAM.—

7 (1) IN GENERAL.—Subject to the availability of appropriations, the  
 8 Administrator may make \$15,000,000 in operational assistance grants  
 9 under section 30707 of this title for each of fiscal years 2008 and  
 10 2009.

11 (2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited  
 12 under section 30711(d) of this title are authorized to be appropriated  
 13 only for the costs of examinations under section 30711 of this title and  
 14 for the costs of other oversight activities with respect to the renewable  
 15 fuel capital investment company program.

16 **Subtitle II—Loan, Contracting, and**  
 17 **Related Assistance Programs**  
 18 **DIVISION A—GENERAL PROVISIONS**  
 19 **CHAPTER 201—GENERAL PROVISIONS**

Sec.

20101. Certification of compliance with child support obligations.

20102. 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.

20103. Extension or renewal of loans.

20104. Deferral of repayment for active duty reservists.

20105. Ownership interest arising from community property law.

20 **§ 20101. Certification of compliance with child support obli-**  
 21 **gations**

22 (a) IN GENERAL.—A recipient of financial assistance under this subtitle  
 23 shall certify that the recipient is not more than 60 days delinquent under  
 24 the terms of any—

25 (1) administrative order;

26 (2) court order; or

27 (3) repayment agreement entered into between the recipient and the  
 28 custodial parent or State agency providing child support enforcement  
 29 services;

30 that requires the recipient to pay child support (as defined in section 459(i)  
 31 of the Social Security Act (42 U.S.C. 659(i))).

32 (b) ENFORCEMENT.—The Administrator shall promulgate such regula-  
 33 tions as are necessary to enforce compliance with this section.

1    **§ 20102. Authorities in carrying out programs for small busi-**  
2                   **ness concerns in areas with high proportions of**  
3                   **unemployed or low-income individuals and small**  
4                   **business concerns owned by low-income individ-**  
5                   **uals**

6           In carrying out section 20504 of this title and the business development  
7 program, the Administrator may—

8           (1) use, with their consent, the services and facilities of Federal  
9 agencies without reimbursement, and, with the consent of any State or  
10 political subdivision of a State, accept and use the services and facili-  
11 ties of the State or subdivision without reimbursement;

12           (2) accept, in the name of the Administration, and employ or dispose  
13 of in furtherance of the purposes of this subtitle, any money or prop-  
14 erty, real, personal, or mixed, tangible, or intangible, received by gift,  
15 devise, bequest, or otherwise;

16           (3) accept voluntary and uncompensated services, notwithstanding  
17 section 1342 of title 31; and

18           (4)(A) employ experts and consultants or organizations of experts  
19 and consultants as authorized by section 3109 of title 5, except that  
20 no individual may be employed under this subsection for more than 100  
21 days in any fiscal year;

22           (B) compensate individuals employed under subparagraph (A) at  
23 rates not in excess of the daily equivalent of the highest rate payable  
24 under section 5332 of title 5, including travel time;

25           (C) allow individuals employed under subparagraph (A), while away  
26 from their homes or regular places of business, travel expenses (includ-  
27 ing per diem in lieu of subsistence) as authorized by section 5703 of  
28 title 5 for persons in the Government service employed intermittently,  
29 while so employed; and

30           (D) notwithstanding section 3109(b) of title 5, renew contracts for  
31 employment under subparagraph (A) annually.

32    **§ 20103. Extension or renewal of loans**

33           (a) IN GENERAL.—The Administrator may extend the maturity of or  
34 renew a loan under the general business loan program, disaster loan pro-  
35 gram, or microloan program for additional periods not to exceed 10 years  
36 beyond the period stated in the loan if the extension or renewal will aid in  
37 the orderly liquidation of the loan.

38           (b) INAPPLICABILITY TO CERTAIN DISASTER LOANS.—Subsection (a)  
39 does not apply to a loan under the disaster loan program that has a term  
40 of more than 20 years.

1 **§ 20104. Deferral of repayment for active duty reservists**

2 (a) DEFINITIONS.—In this section:

3 (1) ELIGIBLE RESERVIST.—The term “eligible reservist” means a  
4 member of a reserve component of the Armed Forces ordered to active  
5 duty during a period of military conflict.

6 (2) ESSENTIAL EMPLOYEE.—The term “essential employee” means  
7 an individual who is employed by a small business concern and whose  
8 managerial or technical expertise is critical to the successful day-to-day  
9 operations of the small business concern.

10 (3) PERIOD OF MILITARY CONFLICT.—The term “period of military  
11 conflict” means—

12 (A) a period of war declared by Congress;

13 (B) a period of national emergency declared by Congress or by  
14 the President; or

15 (C) a period of a contingency operation (as defined in section  
16 101(a) of title 10).

17 (4) QUALIFIED BORROWER.—The term “qualified borrower”  
18 means—

19 (A) an individual who is an eligible reservist and who received  
20 a direct loan under the general business loan program or a dis-  
21 aster assistance program before being ordered to active duty; or

22 (B) a small business concern that received a direct loan under  
23 the general business loan program or a disaster assistance pro-  
24 gram before an eligible reservist, who is an essential employee, was  
25 ordered to active duty.

26 (b) DEFERRAL OF DIRECT LOANS.—

27 (1) IN GENERAL.—The Administrator shall, on written request, defer  
28 repayment of principal and interest due on a direct loan made under  
29 the general business loan program or a disaster assistance program if  
30 the loan was incurred by a qualified borrower.

31 (2) PERIOD OF DEFERRAL.—The period of deferral for repayment  
32 under paragraph (1) shall begin on the date on which the eligible re-  
33 servist is ordered to active duty and terminate on the date that is 180  
34 days after the date on which the eligible reservist is discharged or re-  
35 leased from active duty.

36 (3) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwith-  
37 standing any other provision of law, during the period of deferral under  
38 paragraph (2), the Administrator may reduce the interest rate on a  
39 loan qualifying for a deferral under this subsection.

40 (c) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The  
41 Administrator shall—



1 (1) encourage intermediaries participating in the microloan program  
 2 to defer repayment of a microloan made with proceeds made available  
 3 under the microloan program, if the microloan was incurred by a small  
 4 business concern that is eligible to apply for assistance under section  
 5 21303 of this title; and

6 (2) establish guidelines to—

7 (A) encourage lenders and other intermediaries to defer repay-  
 8 ment of, or provide other relief relating to—

9 (i) loan guarantees under the general business loan pro-  
 10 gram and financings under the certified development company  
 11 program that were incurred by small business concerns that  
 12 are eligible to apply for assistance under section 21303 of  
 13 this title; and

14 (ii) loan guarantees provided under the microloan program  
 15 if the intermediary provides relief to a small business concern  
 16 under this subsection; and

17 (B) implement a program to provide for the deferral of repay-  
 18 ment or other relief to any intermediary providing relief to a small  
 19 business borrower under this subsection.

20 **§ 20105. Ownership interest arising from community prop-**  
 21 **erty law**

22 Ownership requirements to determine the eligibility of a small business  
 23 concern that applies for assistance under any credit program under this  
 24 subtitle shall be determined without regard to any ownership interest of a  
 25 spouse arising solely from the application of the community property law  
 26 of a State for purposes of determining marital interests.

27 **DIVISION B—GENERAL BUSINESS LOAN**  
 28 **PROGRAM**

29 **CHAPTER 203—GENERAL PURPOSE LOANS**

Sec.

- 20301. Loan authority.
- 20302. Methods of participation.
- 20303. No credit elsewhere.
- 20304. Sound and secure requirement.
- 20305. Level of participation in guaranteed loans.
- 20306. Maximum loan amounts.
- 20307. Interest rates.
- 20308. Prepayment charges.
- 20309. Maximum term.
- 20310. Deferment of payments.
- 20311. Guarantee fees.
- 20312. Certified lenders program.
- 20313. Penalty fee on late payment.
- 20314. Yearly fee.
- 20315. Notification to Congress of significant policy or administrative changes.
- 20316. Pilot programs.
- 20317. Calculation of subsidy rate.
- 20318. Leasing.

20319. Real estate appraisals.  
 20320. Express loan program.  
 20321. Loan application preparation and loan servicing by qualified development companies.  
 20322. Increased veteran/reservist participation program.

1     **§ 20301. Loan authority**

2         To the extent and in such amounts as are provided in advance in appro-  
 3         priation Acts, the Administrator may make loans to small business concerns  
 4         (including a small business concern owned by a qualified Indian tribe) for  
 5         plant acquisition, construction, conversion, or expansion, including the ac-  
 6         quisition of land, material, supplies, equipment, and working capital.

7     **§ 20302. Methods of participation**

8         The Administrator may make a loan under section 20301 of this title—

9             (1) directly; or

10            (2) in cooperation with a bank or other lending institution or any  
 11            other entity through an agreement to participate on an immediate or  
 12            deferred (guaranteed) basis.

13    **§ 20303. No credit elsewhere**

14         (a) IN GENERAL.—No financial assistance shall be extended under the  
 15         general business loan program if the applicant can obtain credit elsewhere.

16         (b) IMMEDIATE PARTICIPATION.—No immediate participation may be  
 17         purchased unless it is shown that a deferred participation is not available.

18         (c) DIRECT FINANCING.—No direct financing may be made unless it is  
 19         shown that a participation is not available.

20    **§ 20304. Sound and secure requirement**

21         (a) IN GENERAL.—A loan made under the general business loan program  
 22         shall be of such sound value or so secured as reasonably to ensure repay-  
 23         ment.

24         (b) REASONABLE DOUBT.—In applying subsection (a) in the case of a  
 25         loan to assist a public or private organization for the disabled or to assist  
 26         a disabled individual as provided in section 20503 of this title, any reason-  
 27         able doubt shall be resolved in favor of the applicant.

28         (c) ENERGY MEASURES.—Recognizing that greater risk may be associ-  
 29         ated with a loan for an energy measure as provided in section 20505 of this  
 30         title, in applying subsection (a) in the case of such a loan—

31             (1) factors in determining sound value shall include—

32                 (A) quality of the product or service;

33                 (B) technical qualifications of the applicant or employees of the  
 34                 applicant;

35                 (C) sales projections; and

36                 (D) the financial status of the applicant; and

37             (2) the loan need not be as sound as is generally required for a loan  
 38             under the general business loan program.

1 (d) NO DELEGATION OF AUTHORITY.—The authority conferred by this  
 2 subsection shall be exercised solely by Administration personnel and shall  
 3 not be delegated to other than Administration personnel.

4 **§ 20305. Level of participation in guaranteed loans**

5 (a) IN GENERAL.—Except as provided in subsection (b), in an agreement  
 6 to participate in a loan on a deferred basis under the general business loan  
 7 program (including a loan made under the preferred lenders program), par-  
 8 ticipation by the Administrator shall be equal to—

9 (1) 75 percent of the balance of the financing outstanding at the  
 10 time of disbursement of the loan, if the balance exceeds \$150,000; or

11 (2) 85 percent of the balance of the financing outstanding at the  
 12 time of disbursement of the loan, if the balance is less than or equal  
 13 to \$150,000.

14 (b) REDUCED PARTICIPATION ON REQUEST.—

15 (1) IN GENERAL.—The guarantee percentage specified by subsection  
 16 (a) for a loan under the general business loan program may be reduced  
 17 on the request of the participating lender.

18 (2) PROHIBITION.—The Administrator shall not use the guarantee  
 19 percentage requested by a participating lender under paragraph (1) as  
 20 a criterion for establishing priorities in approving loan guarantee re-  
 21 quests under the general business loan program.

22 (c) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Not-  
 23 withstanding subsection (a), under an agreement to participate in a loan on  
 24 a deferred basis under the export working capital program, participation by  
 25 the Administrator shall not exceed 90 percent.

26 (d) REFINANCING OF INDEBTEDNESS.—On any portion of a loan used to  
 27 refinance indebtedness held by a bank or other lending institution, the Ad-  
 28 ministrator shall limit the amount of deferred participation to 80 percent  
 29 of the amount of the loan at the time of disbursement.

30 **§ 20306. Maximum loan amounts**

31 (a) IN GENERAL.—Except as provided in subsection (b) and subject to  
 32 subsection (c), no loan shall be made to a borrower under the general busi-  
 33 ness loan program if the total amount outstanding and committed (on a de-  
 34 ferred basis, through a participation on an immediate basis, or directly) to  
 35 the borrower under the general business loan program and microloan pro-  
 36 gram would exceed \$1,500,000 (or if the gross loan amount would exceed  
 37 \$2,000,000).

38 (b) SMALL BUSINESS CONCERN IN INDUSTRY ENGAGED IN OR AD-  
 39 VERSELY AFFECTED BY INTERNATIONAL TRADE.—A loan solely for the  
 40 purposes provided in section 20510 of this title may be made under the gen-  
 41 eral business loan program and microloan program if the total amount out-

1 standing and committed (on a deferred basis) to the borrower under the  
2 general business loan program would not exceed \$1,750,000, of which not  
3 more than \$1,250,000 may be used for working capital, supplies, or  
4 financings under section 20508 of this title for export purposes.

5 (c) DIRECT LOANS; PARTICIPATION ON AN IMMEDIATE BASIS.—No loan  
6 shall be made under the general business loan program, either directly or  
7 in cooperation with banks or other lending institutions through agreements  
8 to participate on an immediate basis, if the amount would exceed \$350,000.

9 **§ 20307. Interest rates**

10 (a) MAXIMUM RATE PRESCRIBED BY THE ADMINISTRATOR.—Notwith-  
11 standing the provisions of the constitution of any State or the laws of any  
12 State limiting the rate or amount of interest that may be charged, taken,  
13 received, or reserved, the maximum legal rate of interest on a financing  
14 made on a deferred basis under the general business loan program shall not  
15 exceed a rate prescribed by the Administrator.

16 (b) DIRECT LOANS AND IMMEDIATE PARTICIPATION LOANS.—The rate  
17 of interest for the Administrator's share of any direct loan or immediate  
18 participation loan under the general business loan program shall not exceed  
19 the current average market yield on outstanding marketable obligations of  
20 the United States with remaining periods to maturity comparable to the av-  
21 erage maturities of such loans and adjusted to the nearest 0.125 percent,  
22 and an additional amount as determined by the Administrator, but not to  
23 exceed one percent per year.

24 (c) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a  
25 loan under the general business loan program that is guaranteed under the  
26 preferred lenders program shall not exceed the maximum interest rate, as  
27 determined by the Administrator, applicable to other loans guaranteed  
28 under the general business loan program.

29 (d) LOANS TO ASSIST THE DISABLED.—In the case of a loan under the  
30 general business loan program to assist a public or private organization for  
31 the disabled or to assist a disabled individual as provided in section 20503  
32 of this title, the interest rate shall be 3 percent per year.

33 (e) PAYMENT OF ACCRUED INTEREST.—

34 (1) IN GENERAL.—A bank or other lending institution making a  
35 claim for payment on the guaranteed portion of a loan made under the  
36 general business loan program shall be paid the accrued interest due  
37 on the loan from the earliest date of default to the date of payment  
38 of the claim at a rate not to exceed the rate of interest on the loan  
39 on the date of default, minus one percent.

40 (2) LOANS SOLD ON SECONDARY MARKET.—If a loan described in  
41 paragraph (1) is sold on the secondary market, the amount of interest

1           paid to a bank or other lending institution described in that paragraph  
2           from the earliest date of default to the date of payment of the claim  
3           shall be no more than the agreed upon rate, minus one percent.

4           (3) APPLICABILITY.—Paragraphs (1) and (2) do not apply to loans  
5           made on or after October 1, 2000.

#### 6   **§ 20308. Prepayment charges**

7           (a) IN GENERAL.—A borrower that prepays a loan guaranteed under the  
8           general business loan program shall remit to the Administrator a subsidy  
9           recoupment fee calculated in accordance with subsection (b) if—

10           (1) the loan is for a term of not less than 15 years;

11           (2) the prepayment is voluntary;

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

14           (4) the prepayment is made within the first 3 years after disburse-  
15           ment of the loan proceeds.

16           (b) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged  
17           under subsection (a) shall be—

18           (1) 5 percent of the amount of prepayment, if the borrower prepays  
19           during the first year after disbursement;

20           (2) 3 percent of the amount of prepayment, if the borrower prepays  
21           during the second year after disbursement; and

22           (3) one percent of the amount of prepayment, if the borrower pre-  
23           pays during the third year after disbursement.

#### 24   **§ 20309. Maximum term**

25           (a) IN GENERAL.—Except as provided in subsection (b), no loan (includ-  
26           ing a loan renewal or extension) shall be made under the general business  
27           loan program for a term or terms exceeding 25 years.

28           (b) EXCEPTION.—Any portion of a loan that is made under the general  
29           business loan program for the purpose of acquiring real property or con-  
30           structing, converting, or expanding a facility may have a term of 25 years  
31           plus such additional period as is estimated may be required to complete the  
32           construction, conversion, or expansion.

#### 33   **§ 20310. Deferral of payments**

34           The Administrator may defer payments on the principal of a loan under  
35           the general business loan program for a grace period, and use such other  
36           methods as the Administrator considers necessary and appropriate, to en-  
37           sure the successful establishment and operation of a small business concern.

#### 38   **§ 20311. Guarantee fees**

39           (a) IN GENERAL.—With respect to a loan guaranteed under the general  
40           business loan program (other than a loan that is repayable in one year or

1 less), the Administrator shall collect a guarantee fee, which shall be payable  
2 by the participating lender, and may be charged to the borrower, as follows:

3 (1) A guarantee fee of not to exceed 2 percent of the deferred partici-  
4 pation share of a total loan amount that is not more than \$150,000.

5 (2) A guarantee fee of not to exceed 3 percent of the deferred partici-  
6 pation share of a total loan amount that is more than \$150,000,  
7 but not more than \$700,000.

8 (3) A guarantee fee of not to exceed 3.5 percent of the deferred partici-  
9 pation share of a total loan amount that is more than \$700,000.

10 (4) In addition to the guarantee fee under paragraph (3), a guar-  
11 antee fee equal to 0.25 percent of any portion of the deferred participa-  
12 tion share that is more than \$1,000,000.

13 (b) RETENTION OF CERTAIN FEES.—A lender participating in the gen-  
14 eral business loan program may retain not more than 25 percent of a fee  
15 collected under subsection (a)(1).

16 **§ 20312. Certified lenders program**

17 (a) IN GENERAL.—The Administrator may establish a certified lenders  
18 program for lenders that establish their knowledge of Administration laws  
19 (including regulations) concerning the guaranteed loan program and their  
20 proficiency in program requirements.

21 (b) SUSPENSION OR REVOCATION.—The designation of a lender as a cer-  
22 tified lender shall be suspended or revoked at any time that the Adminis-  
23 trator determines that the lender is not adhering to regulations prescribed  
24 by the Administrator or that the loss experience of the lender is excessive  
25 as compared with that of other lenders, but the suspension or revocation  
26 shall not affect any outstanding guarantee.

27 (c) UNIFORM AND SIMPLIFIED LOAN FORM.—To encourage all lending  
28 institutions and other entities making loans under the general business loan  
29 program to provide loans of \$50,000 or less in guarantees to eligible small  
30 business loan applicants, the Administrator shall develop, and allow partici-  
31 pating lenders to solely use, a uniform and simplified loan form for such  
32 loans.

33 (d) LOAN LIQUIDATION.—

34 (1) IN GENERAL.—The Administrator may permit a lender partici-  
35 pating in the certified lenders program to liquidate a loan made with  
36 a guarantee from the Administrator in accordance with a liquidation  
37 plan approved by the Administrator.

38 (2) AUTOMATIC APPROVAL.—If the Administrator does not approve  
39 or deny a request for approval of a liquidation plan within 10 business  
40 days after the date on which the request is made (or with respect to

1 any routine liquidation activity under such a plan, within 5 business  
2 days), the request shall be deemed to be approved.

3 **§ 20313. Penalty fee on late payment**

4 The Administrator may permit a participating lender to impose and col-  
5 lect a reasonable penalty fee on late payment of a loan guaranteed under  
6 the general business loan program in an amount not to exceed 5 percent  
7 of the monthly loan payment per month plus interest.

8 **§ 20314. Yearly fee**

9 (a) DEFINITION OF COST.—In this section, the term “cost” has the  
10 meaning given the term in section 502 of the Federal Credit Reform Act  
11 of 1990 (2 U.S.C. 661a).

12 (b) FEE.—With respect to a loan approved under the general business  
13 loan program, the Administrator shall assess, collect, and retain a fee, not  
14 to exceed 0.55 percent per year of the outstanding balance of the deferred  
15 participation share of the loan, in an amount established once annually by  
16 the Administrator in the Administrator’s annual budget request to Con-  
17 gress, as necessary to reduce to zero the cost to the Administrator of mak-  
18 ing guarantees under the general business loan program.

19 (c) PAYER.—The yearly fee assessed under subsection (b) shall be pay-  
20 able by the participating lender and shall not be charged to the borrower.

21 (d) LOWERING OF BORROWER FEES.—If the Administrator determines  
22 that fees paid by lenders and by small business borrowers for guarantees  
23 under the general business loan program may be reduced, consistent with  
24 reducing to zero the cost to the Administrator of making such guarantees—

25 (1) the Administrator shall first consider reducing fees paid by small  
26 business borrowers under paragraphs (1) to (3) of section 20311(a) of  
27 this title, to the maximum extent possible; and

28 (2) fees paid by small business borrowers shall not be increased  
29 above the levels in effect on December 8, 2004.

30 **§ 20315. Notification to Congress of significant policy or ad-**  
31 **ministrative changes**

32 Not later than 15 days before making any significant policy or adminis-  
33 trative change affecting the operation of the general business loan program,  
34 the Administrator shall notify the Committee on Small Business and Entre-  
35 preneurship of the Senate and the Committee on Small Business of the  
36 House of Representatives of the change.

37 **§ 20316. Pilot programs**

38 (a) DEFINITION OF PILOT PROGRAM.—In this section, the term “pilot  
39 program” means a lending program initiative, project, innovation, or other  
40 activity not specifically authorized by law.

1 (b) LIMITATION.—Not more than 10 percent of the number of loans  
 2 guaranteed in any fiscal year under the general business loan program may  
 3 be awarded as part of a pilot program commenced on or after October 1,  
 4 1996.

5 (c) LOW DOCUMENTATION LOAN PROGRAM.—

6 (1) IN GENERAL.—The Administrator may carry out the low docu-  
 7 mentation loan program for loans of \$100,000 or less only through  
 8 lenders with significant experience in making small business loans.

9 (2) REGULATIONS.—The Administrator shall promulgate regulations  
 10 defining the experience necessary for participation as a lender in the  
 11 low documentation loan program.

12 **§ 20317. Calculation of subsidy rate**

13 All fees, interest, and profits received and retained by the Administrator  
 14 under the general business loan program shall be included in the calcula-  
 15 tions made by the Director of the Office of Management and Budget to off-  
 16 set the cost (as defined in section 502 of the Federal Credit Reform Act  
 17 of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaran-  
 18 teeing loans under this subtitle.

19 **§ 20318. Leasing**

20 In addition to such other lease arrangements as the Administrator may  
 21 authorize, a borrower may permanently lease to one or more tenants not  
 22 more than 20 percent of any property constructed with the proceeds of a  
 23 loan guaranteed under the general business loan program if the borrower  
 24 permanently occupies and uses not less than 60 percent of the total business  
 25 space in the property.

26 **§ 20319. Real estate appraisals**

27 With respect to a loan under the general business loan program that is  
 28 secured by commercial real property, an appraisal of the property by a State  
 29 licensed or certified appraiser—

30 (1) shall be required by the Administrator in connection with any  
 31 such loan for more than \$250,000; or

32 (2) may be required by the Administrator or the lender in connection  
 33 with any such loan for \$250,000 or less, if an appraisal is necessary  
 34 for appropriate evaluation of creditworthiness.

35 **§ 20320. Express loan program**

36 (a) RESTRICTION TO EXPRESS LENDER.—The authority to make an ex-  
 37 press loan shall be limited to lenders that the Administrator considers quali-  
 38 fied to make express loans.

39 (b) EFFECT OF DESIGNATION.—Designation as an express lender for  
 40 purposes of making an express loan does not preclude the lender from tak-



1 ing any other action authorized by the Administrator for that lender under  
2 the general business loan program.

3 (c) RETENTION OF DESIGNATION OF EXPRESS LENDER.—An express  
4 lender shall retain that designation unless—

5 (1) the Administrator determines that the express lender has violated  
6 the law (including regulations); or

7 (2) the Administrator modifies the requirements to be an express  
8 lender and the lender no longer satisfies those requirements.

9 (d) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the  
10 express loan program is \$350,000.

11 (e) OPTION TO PARTICIPATE.—Except as otherwise provided in this sec-  
12 tion, the Administrator shall take no regulatory, policy, or administrative  
13 action, without regard to whether the action requires notification under sec-  
14 tion 20315 of this title, that has the effect of requiring a lender to make  
15 an express loan.

16 (f) RENEWABLE ENERGY AND ENERGY EFFICIENCY.—The Administrator  
17 may make a loan under the express loan program for the purpose of—

18 (1) purchasing a renewable energy system; or

19 (2) carrying out an energy efficiency project for a small business  
20 concern.

21 **§ 20321. Loan application preparation and loan servicing by**  
22 **qualified development companies**

23 Notwithstanding any other provision of law, a qualified development com-  
24 pany (as defined in section 33101 of this title) may—

25 (1) prepare applications for deferred participation loans under the  
26 general business loan program; and

27 (2) service loans under the general business loan program and  
28 charge a reasonable fee for servicing the loans.

29 **§ 20322. Increased veteran/reservist participation program**

30 (a) DEFINITIONS.—In this section:

31 (1) COST.—The term “cost” has the meaning given the term in sec-  
32 tion 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

33 (2) PILOT PROGRAM.—The term “pilot program” means the pilot  
34 program established under subsection (b).

35 (3) VETERAN/RESERVIST PARTICIPATION LOAN.—The term “veteran/  
36 reservist participation loan” means a loan made under the general busi-  
37 ness loan program to a small business concern owned and controlled  
38 by veterans or by reservists.

39 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a  
40 pilot program under which the Administrator shall reduce the fees for vet-  
41 eran/reservist participation loans.

1 (c) DURATION.—The pilot program shall terminate at the end of the sec-  
2 ond full fiscal year after the date on which the Administrator establishes  
3 the pilot program.

4 (d) MAXIMUM PARTICIPATION.—A veteran/reservist participation loan  
5 shall include the maximum participation levels by the Administrator per-  
6 mitted for loans made under the general business loan program.

7 (e) FEES.—

8 (1) IN GENERAL.—The fee on a veteran/reservist participation loan  
9 shall be equal to 50 percent of the fee otherwise applicable to that loan  
10 under section 20311 of this title.

11 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-  
12 cal year if—

13 (A) for the fiscal year before that fiscal year, the annual esti-  
14 mated rate of default of veteran/reservist participation loans ex-  
15 ceeds that of loans made under the general business loan program  
16 that are not veteran/reservist participation loans;

17 (B) the cost to the Administrator of making loans under the  
18 general business loan program is greater than zero and the cost  
19 is directly attributable to the cost of making veteran/reservist par-  
20 ticipation loans; and

21 (C) no additional source of revenue authority is available to re-  
22 duce the cost of making loans under the general business loan pro-  
23 gram to zero.

24 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction  
25 of fees under paragraph (2), the Administrator—

26 (A) shall not assess or collect fees in an amount greater than  
27 necessary to ensure that the cost of the general business loan pro-  
28 gram is not greater than zero; and

29 (B) shall reinstate the fee reductions under paragraph (1) when  
30 the conditions in paragraph (2) no longer apply.

31 (4) NO INCREASE OF FEES.—The Administrator shall not increase  
32 the fees under 20311 of this title on loans made under the general  
33 business loan program that are not veteran/reservist participation loans  
34 as a direct result of the pilot program.

35 (f) GAO REPORT.—

36 (1) IN GENERAL.—Not later than one year after the date on which  
37 the pilot program terminates, the Comptroller General shall submit to  
38 the Committee on Small Business of the House of Representatives and  
39 the Committee on Small Business and Entrepreneurship of the Senate  
40 a report on the pilot program.

41 (2) CONTENTS.—The report under paragraph (1) shall include—

1 (A) the number of veteran/reservist participation loans for which  
2 fees were reduced under the pilot program;

3 (B) a description of the impact of the pilot program on the gen-  
4 eral business loan program;

5 (C) an evaluation of the efficacy and potential fraud and abuse  
6 of the pilot program; and

7 (D) recommendations for improving the pilot program.

8 **CHAPTER 205—SPECIAL PURPOSE LOANS**

Sec.

20501. Applicability of chapter 203.

20502. Residential or commercial construction or rehabilitation for sale.

20503. The disabled.

20504. Unemployed or low-income individuals.

20505. Energy measures.

20506. Pollution control facilities.

20507. Certified development companies.

20508. Export working capital program.

20509. Qualified employee trusts.

20510. International trade.

20511. Business development.

20512. Closure of defense installations; termination of defense programs; veterans and certain  
other individuals associated with defense.

20513. Loans for energy efficient technologies.

9 **§ 20501. Applicability of chapter 203**

10 The provisions of chapter 203 apply to this chapter except to the extent  
11 that any such provision is inconsistent with a provision of this chapter.

12 **§ 20502. Residential or commercial construction or rehabili-**  
13 **tation for sale**

14 (a) IN GENERAL.—The Administrator may provide a loan under the gen-  
15 eral business loan program to finance residential or commercial construction  
16 or rehabilitation for sale.

17 (b) LIMITATION.—A loan under subsection (a) shall not be used primarily  
18 for the acquisition of land.

19 **§ 20503. The disabled**

20 The Administrator may provide a guaranteed loan under the general busi-  
21 ness loan program to assist a public or private organization for the disabled  
22 or a disabled individual (including a service-disabled veteran) in estab-  
23 lishing, acquiring, or operating a small business concern.

24 **§ 20504. Unemployed or low-income individuals**

25 (a) IMPLEMENTATION.—The general business loan program shall be used  
26 to—

27 (1) assist in the establishment, preservation, and strengthening of  
28 small business concerns and improve the managerial skills employed in  
29 small business concerns, with special attention to, and particular em-  
30 phasis on the preservation or establishment of, small business concerns  
31 that are—

1 (A) located in urban or rural areas with high proportions of un-  
2 employed or low-income individuals; or

3 (B) owned by low-income individuals; and

4 (2) mobilize for those objectives private as well as public managerial  
5 skills and resources.

6 (b) LOAN AUTHORITY.—The Administrator may provide a loan under the  
7 general business loan program to a small business concern or to a qualified  
8 person seeking to establish a small business concern if the Administrator  
9 determines that providing the loan will further the purposes stated in sub-  
10 section (a).

#### 11 **§ 20505. Energy measures**

12 (a) IN GENERAL.—The Administrator may provide a loan under the gen-  
13 eral business loan program to provide assistance (including startup assist-  
14 ance) to a small business concern to enable the small business concern to  
15 design architecturally, or engineer, manufacture, distribute, market, install,  
16 or service, an energy measure.

17 (b) LIMITATION.—The proceeds of a loan under subsection (a) shall not  
18 be used primarily for research and development.

#### 19 **§ 20506. Pollution control facilities**

20 (a) IN GENERAL.—The Administrator may provide a deferred participa-  
21 tion loan under the general business loan program to finance the planning,  
22 design, or installation of a pollution control facility for the purposes speci-  
23 fied in section 404 of the Small Business Investment Act of 1958 (15  
24 U.S.C. 694–1), as in effect before the date of repeal of that section.

25 (b) LIMIT ON AMOUNT.—A loan under subsection (a) may not result in  
26 a total amount outstanding and committed (on a deferred basis) to a bor-  
27 rower under the general business loan program and microloan program of  
28 more than \$1,000,000.

#### 29 **§ 20507. Certified development companies**

30 The Administrator may provide financing under the general business loan  
31 program to certified development companies for the purposes of, and subject  
32 to the restrictions in, the certified development company program.

#### 33 **§ 20508. Export working capital program**

34 (a) IN GENERAL.—The Administrator may provide extensions of credit,  
35 standby letters of credit, revolving lines of credit for export purposes, and  
36 other financing to enable small business concerns (including small business  
37 export trading companies and small business export management compa-  
38 nies) to develop foreign markets.

39 (b) RATE OF INTEREST.—A bank or participating lending institution may  
40 establish such a rate of interest on a financing under subsection (a) as is  
41 legal and reasonable.

1 (e) CONSIDERATIONS.—When considering a loan or guarantee application,  
 2 the Administrator shall give weight to export-related benefits, including the  
 3 opening of new markets for United States goods and services abroad and  
 4 encouraging the involvement of small business concerns (including agricul-  
 5 tural concerns) in the export market.

6 (d) MARKETING OF EXPORT FINANCING PROGRAM.—The Administrator  
 7 shall aggressively market the export working capital program to small busi-  
 8 ness concerns.

9 **§ 20509. Qualified employee trusts**

10 (a) DEFINITION OF QUALIFIED EMPLOYEE TRUST.—In this section:

11 (1) TRUST MAINTAINED BY SMALL BUSINESS CONCERN.—The term  
 12 “qualified employee trust”, with respect to a small business concern,  
 13 means a trust—

14 (A) that forms part of an employee stock ownership plan (as de-  
 15 fined in section 4975(e) of the Internal Revenue Code of 1986 (26  
 16 U.S.C. 4975(e)) that—

17 (i) is maintained by the small business concern; and

18 (ii) provides that each participant in the plan is entitled to  
 19 direct the plan as to the manner in which voting rights under  
 20 qualifying employer securities (as defined in section 4975(e)  
 21 of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e))  
 22 that are allocated to the account of the participant are to be  
 23 exercised with respect to a corporate matter that (by law or  
 24 charter) must be decided by a majority vote of outstanding  
 25 common shares voted; and

26 (B) the trustee of which enters into an agreement with the Ad-  
 27 ministrator that is binding on the trust and on the small business  
 28 concern and provides that—

29 (i) a loan guaranteed under the general business loan pro-  
 30 gram shall be used solely for the purchase of qualifying em-  
 31 ployer securities of the small business concern;

32 (ii) all funds acquired by the small business concern in the  
 33 purchase shall be used by the small business concern solely  
 34 for the purposes for which the loan was guaranteed;

35 (iii) the small business concern will provide such funds as  
 36 are necessary for the timely repayment of the loan, and the  
 37 property of the small business concern shall be available as  
 38 security for repayment of the loan; and

39 (iv) all qualifying employer securities acquired by the trust  
 40 in the purchase shall be allocated to the accounts of partici-  
 41 pants in the plan who are entitled to share in the allocation,

1                   and each participant has a nonforfeitable right, not later than  
2                   the date on which the loan is repaid, to all such qualifying  
3                   employer securities that are allocated to the participant's ac-  
4                   count.

5                   (2) TRUST MAINTAINED BY EMPLOYEE ORGANIZATION.—A trust  
6                   maintained by an employee organization may be treated as a qualified  
7                   employee trust with respect to a small business concern in accordance  
8                   with regulations prescribed under subsection (f).

9                   (b) IN GENERAL.—The Administrator may guarantee a loan under the  
10                  general business loan program to a qualified employee trust with respect to  
11                  a small business concern, on the same basis as if the qualified employee  
12                  trust were the same entity as the small business concern, for the purpose  
13                  of purchasing stock of the small business concern under a plan approved  
14                  by the Administrator that, when carried out, results in the qualified em-  
15                  ployee trust owning at least 51 percent of the stock of the small business  
16                  concern.

17                  (c) PLAN.—

18                  (1) SUBMISSION WITH APPLICATION.—A plan requiring approval  
19                  under subsection (b) shall be submitted to the Administrator by the  
20                  trustee of the qualified employee trust with the application for a loan  
21                  guarantee.

22                  (2) AGREEMENT.—The plan shall include an agreement with the Ad-  
23                  ministrator that is binding on the qualified employee trust and on the  
24                  small business concern and provides that—

25                          (A) not later than the date on which the loan guaranteed under  
26                          subsection (b) is repaid (or as soon after that date as is consistent  
27                          with the requirements of section 401(a) of the Internal Revenue  
28                          Code of 1986 (26 U.S.C. 401(a))), at least 51 percent of the total  
29                          stock of the small business concern shall be allocated to the ac-  
30                          counts of at least 51 percent of the employees of the small busi-  
31                          ness concern who are entitled to share in the allocation;

32                          (B) there will be periodic reviews of the role in the management  
33                          of the small business concern of employees to whose accounts  
34                          stock is allocated; and

35                          (C) there will be adequate management to ensure management  
36                          expertise and continuity.

37                  (d) CRITERIA.—

38                  (1) IN GENERAL.—Except as provided in paragraph (2), in deter-  
39                  mining whether to guarantee a loan under this section, the Adminis-  
40                  trator shall not use the individual business experience or personal as-  
41                  sets of employee-owners as criteria.

1           (2) EXCEPTION.—To the that extent that any employee-owner as-  
2           sumes managerial responsibilities, the Administrator may consider the  
3           business expertise of that employee-owner.

4           (e) TREATMENT OF CORPORATION AS SMALL BUSINESS CONCERN.—For  
5           purposes of this section, a corporation that is controlled by any other person  
6           shall be treated as a small business concern if the corporation would, after  
7           the plan under subsection (c) is carried out, be treated as a small business  
8           concern.

9           (f) REGULATIONS RELATING TO TREATMENT OF A TRUST MAINTAINED  
10          BY AN EMPLOYEE ORGANIZATION.—The Administrator may prescribe regu-  
11          lations under which a trust maintained by an employee organization may  
12          be treated as a qualified employee trust with respect to a small business  
13          concern if—

14               (1) the employee organization represents at least 51 percent of the  
15               employees of the small business concern;

16               (2) the small business concern maintains a plan that—

17                     (A) is an employee benefit plan that is designed to invest pri-  
18                     marily in qualifying employer securities (as defined in section  
19                     4975(e) of the Internal Revenue Code of 1986 (26 U.S.C.  
20                     4975(e)));

21                     (B) provides that each participant in the plan is entitled to di-  
22                     rect the plan as to the manner in which voting rights under quali-  
23                     fying employer securities that are allocated to the account of the  
24                     participant are to be exercised with respect to a corporate matter  
25                     that (by law or charter) must be decided by a majority vote of the  
26                     outstanding common shares voted;

27                     (C) provides that each participant who is entitled to distribution  
28                     from the plan has a right, in the case of qualifying employer secu-  
29                     rities that are not readily tradable on an established market, to  
30                     require that the small business concern repurchase the securities  
31                     under a fair valuation formula; and

32                     (D) meets such other requirements (similar to requirements ap-  
33                     plicable to employee stock ownership plans (as defined in section  
34                     4975(e) of the Internal Revenue Code of 1986 (26 U.S.C.  
35                     4975(e))) as the Administrator may prescribe; and

36               (3) in the case of a loan guarantee under the general business loan  
37               program, the employee organization enters into an agreement with the  
38               Administrator that is described in subsection (a)(1)(B).

39          (g) REPORTS.—The Administrator shall—

1           (1) compile a separate list of applications for assistance under this  
2           section, indicating which applications are accepted and which denied;  
3           and

4           (2) periodically submit to Congress a report on the status of em-  
5           ployee-owned firms assisted by the Administrator.

6           **§ 20510. International trade**

7           (a) IN GENERAL.—If the Administrator determines that a loan guaran-  
8           teed under the general business loan program will allow an eligible small  
9           business concern that is engaged in or adversely affected by international  
10          trade to improve its competitive position, the Administrator may provide a  
11          loan guarantee to assist the small business concern in—

12           (1) the financing of the acquisition, construction, renovation, mod-  
13           ernization, improvement, or expansion of productive facilities or equip-  
14           ment to be used in the United States in the production of a good or  
15           service involved in international trade; or

16           (2) the refinancing of existing indebtedness that is not structured  
17           with reasonable terms and conditions.

18          (b) SECURITY.—A loan under this section shall be secured by a first lien  
19          position or first mortgage on the property or equipment financed by the  
20          loan or on other assets of the small business concern.

21          (c) ENGAGEMENT IN INTERNATIONAL TRADE.—For purposes of this sec-  
22          tion, a small business concern shall be considered to be engaged in inter-  
23          national trade if, as determined by the Administrator, the small business  
24          concern is in a position to expand existing export markets or develop new  
25          export markets.

26          (d) ADVERSE EFFECT OF INTERNATIONAL TRADE.—For purposes of this  
27          section, a small business concern shall be considered to be adversely affected  
28          by international trade if, as determined by the Administrator, the small  
29          business concern—

30           (1) is confronting increased competition with foreign firms in the rel-  
31           evant market; and

32           (2) is injured by such competition.

33          (e) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of sub-  
34          section (d)(2), the Administrator shall accept any finding of injury by the  
35          International Trade Commission or any finding of injury by the Secretary  
36          of Commerce under chapter 3 of title II of the Trade Act of 1974 (19  
37          U.S.C. 2341 et seq.).

38          **§ 20511. Business development**

39          (a) IN GENERAL.—The Administrator may make a loan under the gen-  
40          eral business loan program to a small business concern that is eligible for  
41          assistance under the business development program.



1 (b) REQUIREMENTS.—Assistance may be provided under subsection (a) if  
2 the Administrator determines that—

3 (1) the type and amount of assistance requested by a small business  
4 concern is not otherwise available on reasonable terms from other  
5 sources;

6 (2) with the assistance, the small business concern has a reasonable  
7 prospect for operating soundly and profitably within a reasonable pe-  
8 riod of time;

9 (3) the proceeds of the assistance will be used within a reasonable  
10 time—

11 (A) for plant construction, conversion, or expansion, including  
12 the acquisition of equipment, facilities, machinery, supplies, or ma-  
13 terial; or

14 (B) to supply the small business concern with working capital  
15 to be used in the manufacture of articles, equipment, supplies, or  
16 material for defense or civilian production or as may be necessary  
17 to ensure a well-balanced national economy; and

18 (4) the assistance is of such sound value as reasonably to ensure that  
19 the terms under which the assistance is provided will not be breached  
20 by the small business concern.

21 (c) LIMIT ON AMOUNT.—

22 (1) IN GENERAL.—No loan shall be made under this section if the  
23 total amount outstanding and committed (on a deferred basis, through  
24 a participation on an immediate basis, or directly) to the borrower  
25 under the general business loan program would exceed \$750,000.

26 (2) AMOUNT OF PARTICIPATION.—Subject to paragraph (1), in an  
27 agreement to participate in a loan on a deferred (guaranteed) basis,  
28 participation by the Administrator shall be not less than 85 percent of  
29 the balance of the financing outstanding at the time of disbursement.

30 (d) RATE OF INTEREST.—The rate of interest on a financing made on  
31 a deferred (guaranteed) basis shall be an amount that is legal and reason-  
32 able.

33 (e) LIMITATIONS.—

34 (1) IN GENERAL.—A financing under this section shall be subject to  
35 the limitations stated in this subsection.

36 (2) IMMEDIATE FINANCING.—No immediate participation may be  
37 purchased unless it is shown that a deferred participation is not avail-  
38 able.

39 (3) DIRECT FINANCING.—No direct financing may be made unless  
40 it is shown that a participation is unavailable.

1 (f) SECURED DEBT INSTRUMENT.—A direct loan or the Administrator’s  
 2 share of an immediate participation loan under this section shall be any se-  
 3 cured debt instrument—

4 (1) that is subordinated by its terms to all other borrowings of the  
 5 issuer;

6 (2) the rate of interest on which does not exceed the current average  
 7 market yield on outstanding marketable obligations of the United  
 8 States with remaining periods to maturity comparable to the average  
 9 maturities of such loans and adjusted to the nearest 0.125 percent;

10 (3) the term of which is not more than 25 years;

11 (4) the principal on which is amortized at such a rate as the Admin-  
 12 istrator considers appropriate; and

13 (5) the interest on which is payable not less often than annually.

14 **§ 20512. Closure of defense installations; termination of de-  
 15 fense programs; veterans and certain other indi-  
 16 viduals associated with defense**

17 (a) DEFINITION OF QUALIFIED INDIVIDUAL.—In this section, the term  
 18 “qualified individual” means—

19 (1) a member of the Armed Forces honorably discharged from active  
 20 duty involuntarily or under a program providing bonuses or other in-  
 21 ducements to encourage voluntary separation or early retirement;

22 (2) a civilian employee of the Department of Defense involuntarily  
 23 separated from Federal service or retired under a program offering in-  
 24 ducements to encourage early retirement; or

25 (3) an employee of a prime contractor, subcontractor, or supplier at  
 26 any tier of a Department of Defense program whose employment is in-  
 27 voluntarily terminated (or voluntarily terminated under a program of-  
 28 fering inducements to encourage voluntary separation or early retire-  
 29 ment) due to the termination or substantial reduction of a Department  
 30 of Defense program.

31 (b) LOANS.—The Administrator may make a loan on a guaranteed basis  
 32 under the general business loan program—

33 (1) to a small business concern that has been (or can reasonably be  
 34 expected to be) detrimentally affected by—

35 (A) the closure or substantial reduction of a Department of De-  
 36 fense installation; or

37 (B) the termination or substantial reduction of a Department  
 38 of Defense program on which the small business concern was a  
 39 prime contractor or subcontractor or supplier at any tier; or

40 (2) to a qualified individual or a veteran seeking to establish (or ac-  
 41 quire) and operate a small business concern.

1 (c) RESOLUTION OF DOUBT.—Recognizing that greater risk may be asso-  
 2 ciated with a loan to a small business concern described in subsection  
 3 (b)(1), in making a determination regarding the sound value of the proposed  
 4 loan under section 20304, any reasonable doubt concerning the small busi-  
 5 ness concern’s proposed business plan for transition to nondefense-related  
 6 markets shall be resolved in favor of the loan applicant.

7 (d) AMOUNTS OF LOANS.—Loans under this section shall be authorized  
 8 in such amounts as are provided in advance in appropriation Acts for the  
 9 purposes of loans under this section.

10 (e) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance  
 11 under this section, the Administrator shall develop procedures to ensure, to  
 12 the maximum extent practicable, that the assistance is used for projects  
 13 that—

14 (1) have the greatest potential for—

15 (A) creating new jobs for individuals whose employment is invol-  
 16 untarily terminated due to reductions in Federal defense expendi-  
 17 tures; or

18 (B) preventing the loss of jobs by employees of small business  
 19 concerns described in subsection (b)(1); and

20 (2) have substantial potential for stimulating new economic activity  
 21 in communities most affected by reductions in Federal defense expendi-  
 22 tures.

### 23 **§ 20513. Loans for energy efficient technologies**

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) COVERED ENERGY EFFICIENCY LOAN.—The term “covered en-  
 28 ergy efficiency loan” means a loan—

29 (A) made under the general business loan program; and

30 (B) the proceeds of which are used to—

31 (i) purchase energy efficient designs, equipment, or fix-  
 32 tures; or

33 (ii) reduce the energy consumption of the borrower by 10  
 34 percent or more.

35 (3) PILOT PROGRAM.—The term “pilot program” means the pilot  
 36 program established under subsection (b).

37 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a  
 38 pilot program under which the Administrator shall reduce the fees for cov-  
 39 ered energy efficiency loans.

1 (c) DURATION.—The pilot program shall terminate at the end of the sec-  
 2 ond full fiscal year after the date on which the Administrator establishes  
 3 the pilot program.

4 (d) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall in-  
 5 clude the maximum participation levels by the Administrator permitted for  
 6 loans made under this division.

7 (e) FEES.—

8 (1) IN GENERAL.—The fee on a covered energy efficiency loan shall  
 9 be equal to 50 percent of the fee otherwise applicable to that loan  
 10 under 20311 of this title.

11 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-  
 12 cal year if—

13 (A) for the fiscal year before that fiscal year, the annual rate  
 14 of default of covered energy efficiency loans exceeds that of loans  
 15 made under this division that are not covered energy efficiency  
 16 loans;

17 (B) the cost to the Administrator of making loans under this  
 18 division—

19 (i) is greater than zero; and

20 (ii) is directly attributable to the cost of making covered  
 21 energy efficiency loans; and

22 (C) no additional sources of revenue authority are available to  
 23 reduce the cost of making loans under this division to zero.

24 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction  
 25 of fees under paragraph (2), the Administrator—

26 (A) shall not assess or collect fees in an amount greater than  
 27 necessary to ensure that the cost of the program under this divi-  
 28 sion is not greater than zero; and

29 (B) shall reinstate the fee reductions under paragraph (1) when  
 30 the conditions in paragraph (2) no longer apply.

31 (4) NO INCREASE OF FEES.—The Administrator shall not increase  
 32 the fees under section 20311 of this title on loans made under this divi-  
 33 sion that are not covered energy efficiency loans as a direct result of  
 34 the pilot program.

35 (f) GAO REPORT.—

36 (1) IN GENERAL.—Not later than one year after the date on which  
 37 the pilot program terminates, the Comptroller General shall submit to  
 38 the Committee on Small Business of the House of Representatives and  
 39 the Committee on Small Business and Entrepreneurship of the Senate  
 40 a report on the pilot program.

41 (2) CONTENTS.—The report under paragraph (1) shall include—

- 1 (A) the number of covered energy efficiency loans for which fees  
 2 were reduced under the pilot program;  
 3 (B) a description of the energy efficiency savings with the pilot  
 4 program;  
 5 (C) a description of the impact of the pilot program on the pro-  
 6 gram under this division;  
 7 (D) an evaluation of the efficacy and potential fraud and abuse  
 8 of the pilot program; and  
 9 (E) recommendations for improving the pilot program.

10 **CHAPTER 207—SMALL BUSINESS LENDING COMPANIES**  
 11 **AND NON-FEDERALLY REGULATED LENDERS**

Sec.

20701. Authority to regulate.  
 20702. Capital directive.  
 20703. Civil action.  
 20704. Revocation or suspension of loan authority; cease and desist orders.  
 20705. Removal or suspension of management officials.  
 20706. Appointment of receiver.  
 20707. Taking of possession of assets.  
 20708. Reports.

12 **§ 20701. Authority to regulate**

13 The Administrator—

- 14 (1) may supervise the safety and soundness of small business lending  
 15 companies and non-federally regulated lenders;  
 16 (2) in accordance with the purposes of this subtitle, may—  
 17 (A) regulate small business lending companies;  
 18 (B) set capital standards for small business lending companies;  
 19 (C) examine small business lending companies; and  
 20 (D) enforce laws governing small business lending companies;  
 21 and  
 22 (3) in accordance with the purposes of this subtitle, may—  
 23 (A) regulate non-federally regulated lenders;  
 24 (B) examine non-federally regulated lenders; and  
 25 (C) enforce laws governing the lending activities of non-federally  
 26 regulated lenders under the general business loan program.

27 **§ 20702. Capital directive**

- 28 (a) IN GENERAL.—If the Administrator determines that a small business  
 29 lending company is being operated in an imprudent manner, the Adminis-  
 30 trator may, in addition to any other action authorized by law, issue a direc-  
 31 tive to the small business lending company to increase capital to such level  
 32 as the Administrator determines will result in the safe and sound operation  
 33 of the small business lending company.

1 (b) LIMIT ON DELEGABILITY.—The Administrator may not delegate the  
2 authority granted under subsection (a) except to an Associate Deputy Ad-  
3 ministrator.

4 (c) REGULATIONS.—The Administrator shall issue regulations outlining  
5 the conditions under which the Administrator may determine the level of  
6 capital under subsection (a).

7 **§ 20703. Civil action**

8 If a small business lending company violates this subtitle or subtitle I,  
9 the Administrator may bring a civil action in United States district court  
10 to terminate the rights, privileges, and franchises of the small business lend-  
11 ing company under this subtitle or subtitle I.

12 **§ 20704. Revocation or suspension of loan authority; cease  
13 and desist orders**

14 (a) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

15 (1) IN GENERAL.—The Administrator may revoke or suspend the au-  
16 thority of a small business lending company or a non-federally regu-  
17 lated lender to make, service, or liquidate business loans under the gen-  
18 eral business loan program—

19 (A) for false statements knowingly made in any written submis-  
20 sion required under this subtitle;

21 (B) for omission of a material fact from any written submission  
22 required under this subtitle;

23 (C) for willful or repeated violation of this subtitle;

24 (D) for willful or repeated violation of any condition imposed by  
25 the Administrator with respect to any application, request, or  
26 agreement under this subtitle; or

27 (E) for violation of any cease and desist order of the Adminis-  
28 trator under this chapter.

29 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-  
30 gate power to revoke or suspend authority under paragraph (1) only  
31 to the Deputy Administrator and only if the Administrator is unavail-  
32 able to take the action.

33 (3) PROCEDURE.—

34 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
35 Administrator may revoke or suspend authority under paragraph  
36 (1) only after a hearing under subsection (c).

37 (B) SUSPENSION BEFORE HEARING.—

38 (i) IN GENERAL.—The Administrator, after finding ex-  
39 traordinary circumstances and in order to protect the finan-  
40 cial or legal position of the United States, may issue a sus-

1 pension order without conducting a hearing under subsection  
2 (c).

3 (ii) HEARING.—If the Administrator issues a suspension  
4 under clause (i), the Administrator shall, within 2 business  
5 days after issuance of the suspension, follow the procedure  
6 specified in subsection (c).

7 (C) ACTION BY THE ADMINISTRATOR AFTER HEARING BY AD-  
8 MINISTRATIVE LAW JUDGE.—

9 (i) IN GENERAL.—A revocation or suspension under para-  
10 graph (1) shall be made by the Administrator, except that the  
11 Administrator shall delegate to an administrative law judge  
12 appointed under section 3105 of title 5 the authority to con-  
13 duct any hearing required under subsection (c).

14 (ii) BASIS OF DECISION.—The Administrator shall base the  
15 decision to revoke or suspend on the record of the hearing.

16 (4) EFFECTIVE PERIOD OF SUSPENSION.—A suspension under para-  
17 graph (1) shall remain in effect until the Administrator makes a deci-  
18 sion under paragraph (3)(C) to permanently revoke the authority of the  
19 small business lending company or non-federally regulated lender, sus-  
20 pend the authority for a time certain, or terminate the suspension.

21 (5) NOTIFICATION OF BORROWERS.—On revocation of the authority  
22 of a small business lending company or non-federally regulated lender  
23 under paragraph (1), the small business lending company or non-feder-  
24 ally regulated lender shall, and the Administrator may, notify bor-  
25 rowers of the revocation and of the appointment of a new entity to  
26 service the borrowers' loans.

27 (b) CEASE AND DESIST ORDERS.—

28 (1) IN GENERAL.—If a small business lending company, a non-feder-  
29 ally regulated lender, or other person violates this subtitle or subtitle  
30 I or is engaging or is about to engage in any act or practice that con-  
31 stitutes or will constitute a violation of this subtitle or subtitle I, the  
32 Administrator, after an opportunity for hearing under subsection (c),  
33 may order that—

34 (A) the small business lending company, non-federally regulated  
35 lender, or other person cease and desist from engaging in the act  
36 or practice or in any failure to act;

37 (B) the small business lending company, non-federally regulated  
38 lender, or other person take such action or to refrain from such  
39 action as the Administrator considers necessary to ensure compli-  
40 ance with this subtitle; or

1 (C) the authority of the small business lending company or non-  
 2 federally regulated lender to lend be suspended under subsection  
 3 (a).

4 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-  
 5 gate the authority under paragraph (1) only to the Deputy Adminis-  
 6 trator and only if the Administrator is unavailable to take the action.

7 (3) ORDER BEFORE HEARING.—

8 (A) IN GENERAL.—The Administrator, after finding extraor-  
 9 dinary circumstances and in order to protect the financial or legal  
 10 position of the United States, may issue a cease and desist order  
 11 without conducting a hearing under subsection (c).

12 (B) HEARING.—If the Administrator issues a cease and desist  
 13 order under subparagraph (A), the Administrator shall within 2  
 14 business days follow the procedures specified in subsection (c).

15 (c) PROCEDURE.—

16 (1) ORDER TO SHOW CAUSE.—

17 (A) IN GENERAL.—Before revoking or suspending authority  
 18 under subsection (a) or issuing a cease and desist order under  
 19 subsection (b), the Administrator shall serve an order to show  
 20 cause on the small business lending company, non-federally regu-  
 21 lated lender, or other person why an order revoking or suspending  
 22 the authority or a cease and desist order should not be issued.

23 (B) CONTENTS.—An order under subparagraph (A) shall—

24 (i) contain a statement of the matters of fact and law as-  
 25 serted by the Administrator and the legal authority and juris-  
 26 diction under which a hearing is to be held; and

27 (ii) state that a hearing will be held before an administra-  
 28 tive law judge at a time and place stated in the order.

29 (2) HEARING.—A hearing shall be conducted under sections 554,  
 30 556, and 557 of title 5.

31 (3) ORDER OF REVOCATION OR SUSPENSION; CEASE AND DESIST  
 32 ORDER.—

33 (A) IN GENERAL.—If, after hearing or a waiver of hearing, the  
 34 Administrator determines that an order revoking or suspending  
 35 the authority or a cease and desist order should be issued, the Ad-  
 36 ministrator shall promptly issue the order.

37 (B) CONTENTS.—An order under subparagraph (A) shall—

38 (i) include a statement of the findings of the Administrator  
 39 and the grounds and reasons for the findings; and

40 (ii) specify the effective date of the order.



1 (C) SERVICE.—The Administrator shall cause an order under  
 2 subparagraph (A) to be served on the small business lending com-  
 3 pany, non-federally regulated lender, or other person that is sub-  
 4 ject to the order.

5 (4) WITNESSES.—A witness summoned before the Administrator  
 6 shall be paid by the party at whose instance the witness is called the  
 7 same fees and mileage that are paid witnesses in the courts of the  
 8 United States.

9 (d) FINAL AGENCY ACTION.—An order under subsection (c)(3) is final  
 10 agency action for purposes of chapter 7 of title 5.

11 (e) JUDICIAL REVIEW.—An adversely affected party shall have 20 days  
 12 from the date of issuance of an order under subsection (c)(3) to seek judi-  
 13 cial review in United States district court.

14 **§ 20705. Removal or suspension of management officials**

15 (a) DEFINITION OF MANAGEMENT OFFICIAL.—In this section, the term  
 16 “management official” means an officer, director, general partner, manager,  
 17 employee, agent, or other participant in the management of the affairs of  
 18 a small business lending company’s or non-federally regulated lender’s ac-  
 19 tivities under the general business loan program.

20 (b) REMOVAL OF MANAGEMENT OFFICIAL.—

21 (1) NOTICE.—The Administrator may serve on a management offi-  
 22 cial a written notice of the Administrator’s intention to remove that  
 23 management official if, in the opinion of the Administrator, the man-  
 24 agement official—

25 (A) willfully and knowingly commits a substantial violation of—

26 (i) this subtitle or subtitle I (including any regulation  
 27 issued under this subtitle or subtitle I);

28 (ii) a final cease and desist order under this subtitle; or

29 (iii) any agreement under this subtitle by—

30 (I) the management official; or

31 (II) the small business lending company or non-feder-  
 32 ally regulated lender in which the management official is  
 33 a participant; or

34 (B) willfully and knowingly commits a substantial breach of a  
 35 fiduciary duty of that participant as a management official, if the  
 36 violation or breach of fiduciary duty is one involving personal dis-  
 37 honesty on the part of the management official.

38 (2) CONTENTS.—A notice under paragraph (1) shall—

39 (A) contain a statement of the facts constituting grounds for  
 40 the notice; and

1 (B) state a time and place at which a hearing under paragraph  
2 (3) will be held on the notice.

3 (3) HEARING.—

4 (A) TIMING.—A hearing under sections 554, 556, and 557 of  
5 title 5 shall be held not earlier than 30 nor later than 60 days  
6 after the date of service of notice of the hearing, unless an earlier  
7 or a later date is set by the Administrator at the request of—

- 8 (i) the management official, for good cause; or  
9 (ii) the Attorney General.

10 (B) CONSENT.—Unless the management official appears at a  
11 hearing under this subsection in person or by an authorized rep-  
12 resentative, the management official shall be deemed to have con-  
13 sented to the issuance of an order of removal under paragraph (1).

14 (4) ORDER OF REMOVAL.—

15 (A) IN GENERAL.—In the event of consent under paragraph  
16 (3)(B), or if on the record made at a hearing under this section,  
17 the Administrator finds that any of the grounds specified in the  
18 notice of removal has been established, the Administrator may  
19 issue such orders of removal from office as the Administrator con-  
20 sidered appropriate.

21 (B) EFFECTIVENESS.—An order under subparagraph (A)  
22 shall—

23 (i) take effect 30 days after the date of service on the sub-  
24 ject small business lending company or non-federally regu-  
25 lated lender and the management official concerned (except in  
26 the case of an order issued on consent as described in para-  
27 graph (3)(B), which shall become effective at the time speci-  
28 fied in the order); and

29 (ii) remain effective and enforceable, except to such extent  
30 as the order is stayed, modified, terminated, or set aside by  
31 action of the Administrator or a court in accordance with this  
32 chapter.

33 (c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

34 (1) IN GENERAL.—To protect a small business lending company, a  
35 non-federally regulated lender, or the interests of the Administration or  
36 the United States, the Administrator may suspend from office or pro-  
37 hibit from further participation in any manner in the management or  
38 conduct of the affairs of a small business lending company or non-fed-  
39 erally regulated lender a management official by written notice to that  
40 effect served on the management official.

1 (2) PROHIBITED ACTIVITIES.—A suspension or prohibition under  
2 paragraph (1) may prohibit the management official from making,  
3 servicing, reviewing, approving, or liquidating any loan under the gen-  
4 eral business loan program.

5 (3) EFFECTIVENESS.—A suspension or prohibition under paragraph  
6 (1)—

7 (A) shall take effect on service of notice under subsection (b);  
8 and

9 (B) unless stayed by a court in proceedings under paragraph  
10 (4), shall remain in effect—

11 (i) pending the completion of the administrative pro-  
12 ceedings pursuant to a notice of intention to remove served  
13 under subsection (b); and

14 (ii) until such time as the Administrator dismisses the  
15 charges specified in the notice, or, if an order of removal or  
16 prohibition is issued against the management official, until  
17 the effective date of any such order.

18 (4) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not  
19 later than 10 days after a management official is suspended or prohib-  
20 ited from participation under paragraph (1), the management official  
21 may apply to a United States district court for a stay of the suspension  
22 or prohibition pending the completion of the administrative proceedings  
23 pursuant to a notice of intent to remove served on the management of-  
24 ficial under subsection (b).

25 (d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

26 (1) IN GENERAL.—If a management official is charged in an infor-  
27 mation, indictment, or complaint authorized by a United States attor-  
28 ney, with a felony involving dishonesty or breach of trust, the Adminis-  
29 trator may, by written notice served on the management official, sus-  
30 pend the management official from office or prohibit the management  
31 official from further participation in any manner in the management  
32 or conduct of the affairs of the small business lending company or non-  
33 federally regulated lender in which the management official is a partici-  
34 pant described in subsection (a).

35 (2) EFFECTIVENESS.—A suspension or prohibition under paragraph  
36 (1) shall remain in effect until the information, indictment, or com-  
37 plaint is finally disposed of, or until terminated by the Administrator  
38 or by order of a United States district court.

39 (3) AUTHORITY ON CONVICTION.—

40 (A) IN GENERAL.—If a judgment of conviction with respect to  
41 an offense described in paragraph (1) is entered against a man-

1           agement official, at such time as the judgment is not subject to  
 2           further judicial review, the Administrator may issue and serve on  
 3           the management official an order removing the management offi-  
 4           cial, effective on service of a copy of the order on the small busi-  
 5           ness lending company or non-federally regulated lender in which  
 6           the management official is a participant described in subsection  
 7           (a).

8           (B) JUDGMENT NOT SUBJECT TO FURTHER JUDICIAL RE-  
 9           VIEW.—For purposes of subparagraph (A), further judicial review  
 10          does not include the possibility of review of a petition for a writ  
 11          of habeas corpus.

12          (4) AUTHORITY ON DISMISSAL OR OTHER DISPOSITION.—A finding  
 13          of not guilty or other disposition of charges described in paragraph (1)  
 14          shall not preclude the Administrator from instituting proceedings under  
 15          section 20704 of this title.

16          (e) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR NON-  
 17          FEDERALLY REGULATED LENDER.—A copy of a notice required to be  
 18          served on a management official under this chapter shall also be served on  
 19          the small business lending company or non-federally regulated lender in  
 20          which the management official is a participant described in subsection (a).

21          (f) DECISION.—After a hearing under this section, and not later than 30  
 22          days after the Administrator notifies the parties that the case has been sub-  
 23          mitted for final decision, the Administrator shall—

24               (1) render a decision in the matter (which shall include findings of  
 25               fact on which its decision is predicated); and

26               (2) issue and cause to be served on each party to the proceeding an  
 27               order or orders consistent with this chapter.

28          (g) FINAL AGENCY ACTION.—A decision under subsection (f) shall con-  
 29          stitute final agency action for purposes of chapter 7 of title 5.

30          (h) JUDICIAL REVIEW.—An adversely affected party shall have 20 days  
 31          from the date of issuance of the order to seek judicial review in United  
 32          States district court.

### 33   **§ 20706. Appointment of receiver**

34          (a) IN GENERAL.—In a civil action under this division, the court may—

35               (1) take exclusive jurisdiction over a small business lending company  
 36               or non-federally regulated lender; and

37               (2) appoint a receiver to hold and administer the assets of the small  
 38               business lending company or non-federally regulated lender.

39          (b) APPOINTMENT OF ADMINISTRATOR.—On request of the Adminis-  
 40          trator, the court may appoint the Administrator as a receiver under sub-  
 41          section (a).

1 **§ 20707. Taking of possession of assets**

2 (a) TAKING OF POSSESSION OF LOAN PORTFOLIO.—If a small business  
3 lending company or non-federally regulated lender is not in compliance with  
4 capital requirements or is insolvent, the Administrator may take possession  
5 of the portfolio of loans guaranteed by the Administrator and sell the loans  
6 to a third party by means of a receiver appointed under section 20706 of  
7 this title.

8 (b) TAKING OF POSSESSION OF SERVICING ACTIVITIES.—If a small busi-  
9 ness lending company or non-federally regulated lender is not in compliance  
10 with capital requirements or is insolvent or otherwise operating in an unsafe  
11 and unsound condition, the Administrator may take possession of servicing  
12 activities of loans that are guaranteed by the Administrator and sell the  
13 servicing rights to a third party by means of a receiver appointed under sec-  
14 tion 20706 of this title.

15 **§ 20708. Reports**

16 (a) CIVIL PENALTY FOR FAILURE TO FILE.—

17 (1) IN GENERAL.—A small business lending company or non-feder-  
18 ally regulated lender that violates a regulation or written directive  
19 issued by the Administrator regarding the filing of a regular or special  
20 report shall pay to the United States a civil penalty of not more than  
21 \$5,000 for each day of the continuance of the failure to file the report,  
22 unless it is shown that the violation is due to reasonable cause and not  
23 due to willful neglect.

24 (2) ENFORCEMENT.—A civil penalty under paragraph (1) may be en-  
25 forced in a civil action brought by the Administrator.

26 (3) NONAPPLICABILITY TO CERTAIN SMALL BUSINESS LENDING  
27 COMPANIES.—Paragraph (1) does not apply to an affiliate of a small  
28 business lending company that procures at least 10 percent of its an-  
29 nual purchasing requirements from small manufacturers.

30 (b) EXEMPTION.—

31 (1) IN GENERAL.—If the Administrator determines that granting an  
32 exemption would not be inconsistent with the public interest or the pro-  
33 tection of the Administration, the Administrator may exempt a small  
34 business lending company or non-federally regulated lender from sub-  
35 section (a)—

36 (A) in whole or in part; and

37 (B) on such terms and conditions and for such period of time  
38 as the Administrator considers necessary and appropriate.

39 (2) PROCEDURE.—The Administrator may grant an exemption under  
40 paragraph (1)—

1 (A) by regulation prescribed after an opportunity for notice and  
2 comment; or

3 (B) on application of an interested party, at any time previous  
4 to a violation described in subsection (a), by order, after notice  
5 and opportunity for hearing under sections 554, 556, and 557 of  
6 title 5.

7 (e) ALTERNATIVE REQUIREMENTS.—The Administrator may for purposes  
8 of this section make any alternative requirement that the Administrator  
9 considers to be appropriate to a situation.

## 10 **DIVISION C—MICROLOAN PROGRAM**

### 11 **CHAPTER 211—MICROLOAN PROGRAM**

Sec.

21101. Definitions.

21102. Establishment of microloan program.

21103. Purposes of microloan program.

21104. Eligibility for participation.

21105. Loans to intermediaries; loans by intermediaries to small business concerns.

21106. Marketing, management, and technical assistance grants to intermediaries.

21107. Private sector borrowing technical assistance grants.

21108. Grants for management, marketing, technical assistance, and related services.

#### 12 **§ 21101. Definitions**

13 In this chapter:

14 (1) INTERMEDIARY.—The term “intermediary” means—

15 (A) a private, nonprofit entity;

16 (B) a private, nonprofit community development corporation;

17 (C) a consortium of private, nonprofit organizations or nonprofit  
18 community development corporations;

19 (D) a quasi-governmental economic development entity (such as  
20 a planning and development district), other than a State, county,  
21 or municipal government (or any agency of a State, county, or  
22 municipal government), in a geographic area—

23 (i) in which no application is received from an eligible non-  
24 profit organization; or

25 (ii) with respect to which the Administrator determines  
26 that the needs of the geographic area are not adequately  
27 served by an existing, eligible nonprofit organization that has  
28 submitted an application; or

29 (E) an agency of or nonprofit entity established by a Native  
30 American Tribal Government;

31 that seeks to borrow or has borrowed funds from the Administrator to  
32 make microloans to small business concerns under the microloan pro-  
33 gram.

1 (2) MICROLOAN.—The term “microloan” means a short-term, fixed  
 2 rate loan of not more than \$35,000, made by an intermediary to a  
 3 startup, newly established, or growing small business concern.

4 (3) RURAL AREA.—The term “rural area” means a political subdivi-  
 5 sion or unincorporated area—

6 (A) in a nonmetropolitan county (as defined by the Secretary  
 7 of Agriculture) or its equivalent; or

8 (B) in a metropolitan county or its equivalent that has a resi-  
 9 dent population of less than 20,000 if the Administrator deter-  
 10 mines the political subdivision or unincorporated area to be rural.

11 (4) STATE.—The term “State” includes the District of Columbia,  
 12 Puerto Rico, the United States Virgin Islands, Guam, and American  
 13 Samoa.

14 **§ 21102. Establishment of microloan program**

15 There is established within the Administration a microloan program.

16 **§ 21103. Purposes of microloan program**

17 The purposes of the microloan program are—

18 (1) to assist women, low-income, veteran, and minority entrepreneurs  
 19 and business owners and other such individuals possessing the capa-  
 20 bility to operate successful business concerns;

21 (2) to assist small business concerns in areas suffering from a lack  
 22 of credit due to economic downturns;

23 (3) to make loans to eligible intermediaries to enable the inter-  
 24 mediaries to provide small-scale loans, particularly loans in amounts  
 25 averaging not more than \$10,000, to startup, newly established, or  
 26 growing small business concerns for working capital or the acquisition  
 27 of materials, supplies, or equipment;

28 (4) to make grants to eligible intermediaries that, together with non-  
 29 Federal matching funds, will enable the intermediaries to provide inten-  
 30 sive marketing, management, and technical assistance to microloan bor-  
 31 rowers;

32 (5) to make grants to eligible nonprofit entities that, together with  
 33 non-Federal matching funds, will enable the entities to provide inten-  
 34 sive marketing, management, and technical assistance to assist low-in-  
 35 come entrepreneurs and other low-income individuals obtain private  
 36 sector financing for their businesses, with or without loan guarantees;

37 (6) to report to the Committee on Small Business and Entrepreneur-  
 38 ship of the Senate and the Committee on Small Business of the House  
 39 of Representatives on the effectiveness of the microloan program and  
 40 the advisability and feasibility of implementing such a program nation-  
 41 wide; and

1 (7) to establish a welfare-to-work microloan initiative to test the fea-  
 2 sibility of supplementing the technical assistance grants provided under  
 3 sections 21106 and 21107 of this title to individuals who are receiving  
 4 assistance under the State program funded under part A of title IV  
 5 of the Social Security Act (42 U.S.C. 601 et seq.), or under any com-  
 6 parable State-funded means-tested program of assistance for low-in-  
 7 come individuals, to adequately assist those individuals in—

- 8 (A) establishing small business concerns; and
- 9 (B) eliminating their dependence on that assistance.

10 **§ 21104. Eligibility for participation**

11 An intermediary shall be eligible to receive loans and grants under sec-  
 12 tions 21105 and 21106 of this title if the intermediary has at least one year  
 13 of experience making microloans to startup, newly established, or growing  
 14 small business concerns and providing, as an integral part of the microloan  
 15 program, intensive marketing, management, and technical assistance to its  
 16 borrowers.

17 **§ 21105. Loans to intermediaries; loans by intermediaries to**  
 18 **small business concerns**

19 (a) IN GENERAL.—Under the microloan program, the Administrator may  
 20 make direct loans to eligible intermediaries for the purpose of making  
 21 microloans to small business concerns under this section.

22 (b) LOAN APPLICATIONS.—

23 (1) IN GENERAL.—As part of an application for a loan, an inter-  
 24 mediary shall submit to the Administrator a description of—

- 25 (A) the type of businesses to be assisted;
- 26 (B) the size and range of loans to be made;
- 27 (C) the geographic area to be served, including a description of  
 28 the economic, poverty, and unemployment characteristics of the  
 29 area;
- 30 (D) the status of small business concerns in the area to be  
 31 served, including an analysis of their credit and technical assist-  
 32 ance needs;
- 33 (E) any marketing, management, and technical assistance to be  
 34 provided in connection with a loan made under this chapter;
- 35 (F) the local economic credit markets, including the costs asso-  
 36 ciated with obtaining credit locally;
- 37 (G) the qualifications of the applicant to carry out the purposes  
 38 of the microloan program; and
- 39 (H) any plan to involve other technical assistance providers  
 40 (such as counselors from SCORE or small business development



1           centers) or private sector lenders in assisting selected business  
2           concerns.

3           (2) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to  
4           participate in the microloan program, the Administrator shall give pri-  
5           ority to applicants that provide loans in amounts averaging not more  
6           than \$10,000.

7           (e) INTERMEDIARY CONTRIBUTION.—As a condition of a loan under sub-  
8           section (a), the Administrator shall require an intermediary to contribute  
9           not less than 15 percent of the loan amount in cash from a non-Federal  
10          source.

11          (d) LOAN LIMITS.—A loan shall not be made under the microloan pro-  
12          gram if the total amount outstanding and committed (on a deferred basis,  
13          through a participation on an immediate basis, or directly) to one inter-  
14          mediary (excluding outstanding grants) under the general business loan pro-  
15          gram and microloan program would, as a result of the loan, exceed  
16          \$750,000 in the first year of the intermediary's participation in the  
17          microloan program or \$3,500,000 in any subsequent year of the  
18          intermediary's participation in the microloan program.

19          (e) LOAN TERM.—A loan made by the Administrator under this chapter  
20          shall be for a term of 10 years.

21          (f) DELAYED PAYMENTS.—Except for a loan loss reserve fund under sub-  
22          section (i), the Administrator shall not require repayment of principal or in-  
23          terest on a loan made to an intermediary under this chapter during the first  
24          year of the loan.

25          (g) NO FEE OR COLLATERAL.—Except for a loan loss reserve fund under  
26          subsection (i), the Administrator shall not charge any fee or require collat-  
27          eral other than an assignment of the notes receivable of the microloans with  
28          respect to any loan made to an intermediary under the microloan program.

29          (h) INTEREST RATES.—

30                (1) IN GENERAL.—Except as provided in paragraph (2), a loan made  
31                by the Administrator to an intermediary under this chapter shall bear  
32                an interest rate equal to 1.25 percentage points below the rate deter-  
33                mined by the Secretary of the Treasury for obligations of the United  
34                States with a period of maturity of 5 years, adjusted to the nearest  
35                0.125 percent.

36                (2) RATES APPLICABLE TO CERTAIN SMALL LOANS.—A loan made  
37                by the Administrator to an intermediary that makes loans to small  
38                business concerns and entrepreneurs averaging not more than \$7,500  
39                shall bear an interest rate that is 2 percentage points below the rate  
40                determined by the Secretary of the Treasury for obligations of the

1 United States with a period of maturity of 5 years, adjusted to the  
2 nearest 0.125 percent.

3 (3) MULTIPLE SITES OR OFFICES.—The interest rate determined  
4 under paragraph (1) or (2) shall apply to each separate loanmaking  
5 site or office of an intermediary only if the site or office meets the re-  
6 quirements of that paragraph.

7 (4) RATE BASIS.—The applicable rate of interest under this sub-  
8 section—

9 (A) for the first year of an intermediary's participation in the  
10 microloan program, shall be applied retroactively based on the ac-  
11 tual lending practices of the intermediary as determined by the  
12 Administrator before the end of that year; and

13 (B) for each subsequent year of an intermediary's participation  
14 in the microloan program, shall be based on the actual lending  
15 practices of the intermediary during the term of the intermediary's  
16 participation in the microloan program.

17 (i) LOSS RESERVE OF INTERMEDIARIES.—

18 (1) IN GENERAL.—The Administrator shall by regulation require an  
19 intermediary to establish and maintain a loan loss reserve fund until  
20 all obligations owed to the Administrator under the microloan program  
21 are repaid.

22 (2) LEVEL OF LOAN LOSS RESERVE FUND.—

23 (A) IN GENERAL.—Subject to subparagraph (C), the Adminis-  
24 trator shall require the loan loss reserve fund of an intermediary  
25 to be maintained at a level equal to 15 percent of the outstanding  
26 balance of the notes receivable owed to the intermediary.

27 (B) REVIEW OF LOAN LOSS RESERVE.—

28 (i) IN GENERAL.—After the initial 5 years of an  
29 intermediary's participation in the microloan program, the  
30 Administrator shall, at the request of the intermediary, con-  
31 duct a review of the annual loss rate of the intermediary.

32 (ii) REVIEW PERIOD.—An intermediary that requests a re-  
33 duction in its loan loss reserve shall be reviewed based on the  
34 most recent 5-year period preceding the request.

35 (C) REDUCTION OF LOAN LOSS RESERVE.—Subject to subpara-  
36 graph (D), the Administrator may reduce the annual loan loss re-  
37 serve requirement of an intermediary to reflect the actual average  
38 loan loss rate for the intermediary during the preceding 5-year pe-  
39 riod, except that in no case shall the loan loss reserve be reduced  
40 to less than 10 percent of the outstanding balance of the notes  
41 receivable owed to the intermediary.

1 (D) REQUIREMENTS.—The Administrator may reduce the an-  
 2 nual loan loss reserve requirement of an intermediary only if the  
 3 intermediary demonstrates to the satisfaction of the Administrator  
 4 that—

5 (i) the average annual loss rate for the intermediary during  
 6 the preceding 5-year period is less than 15 percent; and

7 (ii) no other factors exist that may impair the ability of the  
 8 intermediary to repay all obligations owed to the Adminis-  
 9 trator under this chapter.

10 (j) LOANS BY INTERMEDIARIES TO SMALL BUSINESS CONCERNS.—

11 (1) IN GENERAL.—From funds made available to an intermediary  
 12 under the microloan program, the intermediary shall make short-term,  
 13 fixed rate loans to startup, newly established, and growing small busi-  
 14 ness concerns for working capital and the acquisition of materials, sup-  
 15 plies, furniture, fixtures, and equipment.

16 (2) LOAN AMOUNT.—

17 (A) PORTFOLIO REQUIREMENT.—To the extent practicable, an  
 18 intermediary that operates under the microloan program shall  
 19 maintain a microloan portfolio with an average loan size of not  
 20 more than \$15,000.

21 (B) UNAVAILABILITY OF COMPARABLE CREDIT.—An inter-  
 22 mediary may make a loan under the microloan program of more  
 23 than \$20,000 to a small business concern only if the small busi-  
 24 ness concern demonstrates that—

25 (i) it is unable to obtain credit elsewhere at comparable in-  
 26 terest rates; and

27 (ii) it has good prospects for success.

28 (C) MAXIMUM AMOUNT.—An intermediary shall not—

29 (i) make a loan under this chapter of more than \$35,000;

30 or

31 (ii) have outstanding or committed to any one borrower  
 32 more than \$35,000.

33 (3) INTEREST LIMIT.—Notwithstanding any provision of law of any  
 34 State (including the constitution of a State) pertaining to the rate or  
 35 amount of interest that may be charged, taken, received, or reserved  
 36 on a loan, the maximum rate of interest to be charged on a microloan  
 37 funded under this chapter shall not exceed the rate of interest applica-  
 38 ble to a loan made to an intermediary by the Administrator—

39 (A) in the case of a loan of more than \$7,500 made by the  
 40 intermediary to a small business concern or entrepreneur, by more  
 41 than 7.75 percentage points; and

1 (B) in the case of a loan of not more than \$7,500 made by the  
 2 intermediary to a small business concern or entrepreneur by more  
 3 than 8.5 percentage points.

4 (4) REVIEW RESTRICTION.—The Administrator shall not review indi-  
 5 vidual microloans made by intermediaries prior to approval.

6 (5) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSI-  
 7 NESSES.—In addition to other eligible small business concerns, a bor-  
 8 rower under the microloan program may include an individual who will  
 9 use the loan proceeds to establish—

10 (A) a for-profit or nonprofit child care establishment; or

11 (B) a business providing a for-profit transportation service.

12 (k) PROGRAM FUNDING FOR MICROLOANS.—

13 (1) NUMBER OF PARTICIPANTS.—Under the microloan program, the  
 14 Administrator may fund, on a competitive basis, not more than 300  
 15 intermediaries.

16 (2) ALLOCATION.—

17 (A) MINIMUM ALLOCATION.—Subject to the availability of ap-  
 18 propriations, of the total amount of new loan funds made available  
 19 for award under the microloan program for each fiscal year, the  
 20 Administrator shall make available for award in each State an  
 21 amount equal to the sum of—

22 (i) the lesser of—

23 (I) \$800,000; or

24 (II)  $\frac{1}{55}$  of the total amount of new loan funds made  
 25 available for award under the microloan program for  
 26 that fiscal year; and

27 (ii) any additional amount, as determined by the Adminis-  
 28 trator.

29 (B) REDISTRIBUTION.—If, at the beginning of the third quarter  
 30 of a fiscal year, the Administrator determines that any portion of  
 31 the amount made available to carry out the microloan program is  
 32 unlikely to be made available under subparagraph (A) during that  
 33 fiscal year, the Administrator may make that portion available for  
 34 award in any one or more States without regard to subparagraph  
 35 (A).

36 (l) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving  
 37 microloan program applicants and providing funding to intermediaries  
 38 under the microloan program, the Administrator shall select and provide  
 39 funding to such intermediaries as will ensure appropriate availability of  
 40 loans for small business concerns in all industries located throughout each

1 State, particularly industries located in urban areas and industries located  
2 in rural areas.

3 **§21106. Marketing, management, and technical assistance**  
4 **grants to intermediaries**

5 (a) IN GENERAL.—In conjunction with a loan to an intermediary under  
6 section 21105 of this title, the Administrator may make a grant to the eligi-  
7 ble intermediary for the purpose of providing intensive marketing, manage-  
8 ment, and technical assistance to small business concerns that are borrowers  
9 under the microloan program.

10 (b) GRANT AMOUNT.—

11 (1) IN GENERAL.—An intermediary that receives a loan under sec-  
12 tion 21105 of this title shall be eligible to receive a grant in an amount  
13 equal to not more than 25 percent of the total outstanding balance of  
14 loans made to the intermediary under the microloan program.

15 (2) INTERMEDIARY CONTRIBUTION.—

16 (A) IN GENERAL.—As a condition of a grant under paragraph  
17 (1), the Administrator shall require the intermediary to contribute  
18 an amount equal to 25 percent of the amount of the grant, ob-  
19 tained solely from a non-Federal source.

20 (B) FORM.—In addition to cash or other direct funding, a con-  
21 tribution under subparagraph (A) may include indirect costs or in-  
22 kind contributions paid for under a non-Federal program.

23 (c) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN  
24 LOANS.—

25 (1) IN GENERAL.—An intermediary that has a portfolio of loans  
26 under the microloan program that averages not more than \$10,000  
27 during the period of the intermediary's participation in the microloan  
28 program shall be eligible to receive a grant equal to 5 percent of the  
29 total outstanding balance of loans made to the intermediary under the  
30 microloan program, in addition to any grant made under subsection  
31 (b).

32 (2) USE.—A grant under paragraph (1) shall be used to provide  
33 marketing, management, and technical assistance to small business  
34 concerns that are borrowers under the microloan program.

35 (d) MULTIPLE SITES OR OFFICES.—Eligibility for a grant under sub-  
36 section (b) or (c) shall be determined separately for each loanmaking site  
37 or office of an intermediary.

38 (e) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

39 (1) IN GENERAL.—An intermediary may expend an amount not to  
40 exceed 25 percent of the funds received under subsection (a) to provide

1 information and technical assistance to small business concerns that  
2 are prospective borrowers under section 21108 of this title.

3 (2) TECHNICAL ASSISTANCE.—An intermediary may provide tech-  
4 nical assistance under paragraph (1) through a third party contract.

5 **§ 21107. Private sector borrowing technical assistance**  
6 **grants**

7 (a) IN GENERAL.—The Administrator may make grants to nonprofit enti-  
8 ties for the purpose of providing marketing, management, and technical as-  
9 sistance to low-income individuals seeking to start or enlarge their own busi-  
10 nesses, if the assistance includes working with the grant recipient to secure  
11 loans in amounts not to exceed \$35,000 from private sector lending institu-  
12 tions, with or without a loan guarantee from the nonprofit entity.

13 (b) GRANT AMOUNTS.—The Administrator may make not more than 55  
14 grants annually under subsection (a), each in an amount not to exceed  
15 \$200,000.

16 (c) GRANT RECIPIENT CONTRIBUTION.—

17 (1) IN GENERAL.—As a condition of a grant under subsection (a),  
18 the Administrator shall require the grant recipient to contribute an  
19 amount equal to 20 percent of the amount of the grant, obtained solely  
20 from a non-Federal source.

21 (2) FORM.—In addition to cash or other direct funding, a contribu-  
22 tion under paragraph (1) may include indirect costs or in-kind con-  
23 tributions paid for under a non-Federal program.

24 **§ 21108. Grants for management, marketing, technical as-**  
25 **sistance, and related services**

26 (a) IN GENERAL.—The Administrator may procure technical assistance  
27 for intermediaries participating in the microloan program to ensure that the  
28 intermediaries have the knowledge, skills, and understanding of micro-  
29 lending practices necessary to operate a successful microloan program.

30 (b) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of  
31 the annual appropriation for loans and loan guarantees under this chapter  
32 to the Administration's Salaries and Expense Account for the specific pur-  
33 pose of providing one or more technical assistance grants to experienced  
34 microlending organizations and national and regional nonprofit organiza-  
35 tions that have demonstrated experience in providing training support for  
36 microenterprise development and financing to achieve the purpose specified  
37 in subsection (a).

38 (c) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made  
39 available to carry out the welfare-to-work microloan initiative under section  
40 21103(7) of this title for any fiscal year, the Administrator may use not  
41 more than 5 percent to provide technical assistance, either directly or

1 through contractors, to welfare-to-work microloan initiative grantees, to en-  
 2 sure that the grantees have the knowledge, skills, and understanding of  
 3 microlending and welfare-to-work transition, and other related issues, to op-  
 4 erate a successful welfare-to-work microloan initiative.

5 **DIVISION D—DISASTER ASSISTANCE**  
 6 **PROGRAMS**

7 **CHAPTER 213—DISASTER LOAN PROGRAM**

Sec.

- 21301. Physical loss disaster loans.
- 21302. Economic injury disaster loans.
- 21303. Loans to assist small business concerns that suffer injury as a result of an essential employee's being ordered to active military duty.
- 21304. Public awareness of disaster declaration and application periods.
- 21305. Disaster loan processing.
- 21306. Disaster assistance employees.
- 21307. Maximum loan amount.
- 21308. Declaration of eligibility for additional disaster assistance.
- 21309. Interest rates.
- 21310. Maximum term.
- 21311. Deferment of repayment.
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- 21313. Participation in loans on deferred basis.
- 21314. Assistance and counseling for disaster victims.
- 21315. Priority in allocating funds.
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- 21318. Biennial disaster simulation exercise.
- 21319. Disaster planning responsibilities.
- 21320. Disaster response plan.
- 21321. Coordination of disaster assistance programs with FEMA.
- 21322. Plans to secure sufficient office space.
- 21323. Bond guarantees in procurements relating to a major disaster.
- 21324. Civil penalty.

8 **§ 21301. Physical loss disaster loans**

9 (a) IN GENERAL.—Except as to agricultural enterprises, to the extent  
 10 and in such amounts as are provided in advance in appropriation Acts, the  
 11 Administrator may make such a loan (directly or in cooperation with a bank  
 12 or other lending institution through an agreement to participate on an im-  
 13 mediate or deferred (guaranteed) basis) as the Administrator determines to  
 14 be necessary or appropriate to repair, rehabilitate, or replace property, real  
 15 or personal, damaged or destroyed by or as a result of a natural or other  
 16 disaster.

17 (b) LOAN AMOUNT.—

18 (1) IN GENERAL.—The amount of a loan under subsection (a) shall  
 19 be equal to 100 percent of the amount of the loss, minus any amount  
 20 compensated for by insurance or otherwise.

21 (2) PROTECTION FROM FUTURE DISASTERS.—The Administrator  
 22 may increase the amount of a loan under subsection (a) by up to 20  
 23 percent of the aggregate costs of the damage or destruction (whether  
 24 or not compensated for by insurance or otherwise) if the Administrator  
 25 determines the increase to be necessary or appropriate to protect the

1 damaged or destroyed property from future disasters by taking miti-  
 2 gating measures, including construction of retaining walls and sea  
 3 walls, grading and contouring land, relocating utilities, and modifying  
 4 structures.

5 (3) LIMITATION ON LOAN AMOUNT.—

6 (A) IN GENERAL.—No loan under this section shall be made if  
 7 the total amount outstanding and committed to the borrower  
 8 under the disaster loan program would exceed \$1,500,000 for any  
 9 one disaster unless an applicant constitutes a major source of em-  
 10 ployment in an area suffering a disaster, in which case the Admin-  
 11 istrator may waive the \$1,500,000 limitation.

12 (B) MAJOR SOURCE OF EMPLOYMENT.—For purposes of deter-  
 13 mining whether a nonprofit applicant that owns a premises con-  
 14 stitutes a major source of employment under subparagraph (A),  
 15 the employees of 2 or more concerns that share the premises as  
 16 a common business premises shall be aggregated.

17 (4) LIMITATION ON REDUCTION OF LOAN AMOUNT.—

18 (A) IN GENERAL.—The Administrator shall not reduce the  
 19 amount of a loan—

20 (i) for any homeowner on account of loss of real estate to  
 21 less than \$100,000 for any one disaster; or

22 (ii) for any homeowner or lessee on account of loss of per-  
 23 sonal property to less than \$20,000 for any one disaster.

24 (B) REFINANCING.—The \$100,000 and \$20,000 amounts in  
 25 subparagraph (A) are in addition to any refinancing for which a  
 26 loan applicant is eligible.

27 (c) REFINANCINGS.—

28 (1) IN GENERAL.—A loan or guarantee may be made to refinance  
 29 a mortgage or other lien against a totally destroyed or substantially  
 30 damaged home or business concern (other than an agricultural enter-  
 31 prise).

32 (2) REQUIREMENTS.—A loan or guarantee under paragraph (1) shall  
 33 not be made unless the Administrator determines that—

34 (A) the applicant is not able to obtain credit elsewhere; and

35 (B) the property is to be repaired, rehabilitated, or replaced.

36 (3) AMOUNT.—The amount refinanced under paragraph (1)—

37 (A) shall not exceed the amount of physical loss sustained; and

38 (B) shall be reduced to the extent that the mortgage or lien is  
 39 satisfied by insurance or otherwise.

40 (d) COLLATERAL.—The Administrator shall not require collateral for a  
 41 loan of \$14,000 (or such greater amount as the Administrator determines



1 to be appropriate in the event of a major disaster) or less that is made  
2 under this section.

3 **§ 21302. Economic injury disaster loans**

4 (a) DEFINITIONS.—In this section:

5 (1) DISASTER.—The term “disaster” includes—

6 (A) a drought;

7 (B) a below average water level in one or more of the Great  
8 Lakes or on any other body of water in the United States that  
9 supports commerce by small business concerns; and

10 (C) an ice storm or blizzard.

11 (2) DISASTER AREA.—The term “disaster area” includes—

12 (A) a county determined to be a disaster by the President, the  
13 Secretary of Agriculture, or the Administrator; and

14 (B) a county contiguous to a county described in subparagraph  
15 (A).

16 (b) LOANS.—Except as to agricultural enterprises, to the extent and in  
17 such amounts as are provided in advance in appropriation Acts, the Admin-  
18 istrator may make such a loan (directly or in cooperation with a bank or  
19 other lending institution through an agreement to participate on an imme-  
20 diate or deferred (guaranteed) basis) as the Administrator determines to be  
21 necessary or appropriate to a small business concern, private nonprofit orga-  
22 nization, or small agricultural cooperative located in a disaster area if—

23 (1) the Administrator determines that the small business concern,  
24 private nonprofit organization, or agricultural cooperative has suffered  
25 a substantial economic injury as a result of the disaster;

26 (2)(A) the disaster constitutes—

27 (i) a major disaster;

28 (ii) a natural disaster, as determined by the Secretary of Agri-  
29 culture under section 321 of the Consolidated Farm and Rural  
30 Development Act (7 U.S.C. 1961), in which case, assistance under  
31 this section may be provided to farm-related and nonfarm-related  
32 small business concerns, subject to the other applicable require-  
33 ments of this section; or

34 (iii) a disaster, as determined by the Administrator; or

35 (B) if no disaster described in subparagraph (A) is declared, the  
36 Governor of a State in which a disaster has occurred certifies to the  
37 Administrator that small business concerns, private nonprofits organi-  
38 zations, or small agricultural cooperatives—

39 (i) have suffered economic injury as a result of the disaster; and

40 (ii) are in need of financial assistance that is not available on  
41 reasonable terms in the disaster area; and

1 (3) the Administrator determines that the applicant is not able to  
2 obtain credit elsewhere.

3 (c) PROMPT RESPONSE TO CERTIFICATION.—Not later than 30 days  
4 after the date of receipt of a certification by a Governor of a State under  
5 subsection (b)(2)(B), the Administrator shall respond in writing to the Gov-  
6 ernor on the Administrator’s determination regarding the certification, stat-  
7 ing the reasons for the determination.

8 (d) LIMITATION ON LOAN AMOUNT.—

9 (1) IN GENERAL.—No loan under this section shall be made if the  
10 total amount outstanding and committed to a borrower under the dis-  
11 aster loan program would exceed \$1,500,000 for any one disaster un-  
12 less the borrower constitutes a major source of employment in a dis-  
13 aster area, in which case the Administrator may waive the \$1,500,000  
14 limitation.

15 (2) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining  
16 whether a nonprofit applicant that owns a premises constitutes a major  
17 source of employment under paragraph (1), the employees of 2 or more  
18 concerns that share the premises as a common business premises shall  
19 be aggregated.

20 (e) NURSERIES.—The Administrator shall not withhold disaster assist-  
21 ance under this section to a nursery that is a victim of a drought disaster.

22 **§ 21303. Loans to assist small business concerns that suffer**  
23 **injury as a result of an essential employee’s being**  
24 **ordered to active military duty**

25 (a) DEFINITIONS.—In this section:

26 (1) ESSENTIAL EMPLOYEE.—The term “essential employee” means  
27 an individual who is employed by a small business concern and whose  
28 managerial or technical expertise is critical to the successful day-to-day  
29 operations of the small business concern.

30 (2) PERIOD OF MILITARY CONFLICT.—The term “period of military  
31 conflict” has the meaning given the term in section 20104(a) of this  
32 title.

33 (3) RESERVIST EXPECTING ACTIVATION.—The term “reservist ex-  
34 pecting activation” means a reservist who—

35 (A) has not been ordered to active duty;

36 (B) expects to be ordered to active duty during a period of mili-  
37 tary conflict; and

38 (C) is a key employee of a small business concern that can rea-  
39 sonably demonstrate that the small business concern will suffer  
40 economic injury in the absence of the reservist.

1 (4) SUBSTANTIAL ECONOMIC INJURY.—The term “substantial eco-  
2 nomic injury” means an economic harm to a small business concern  
3 that results in the inability of the small business concern to—

4 (A) meet its obligations as they mature;

5 (B) pay its ordinary and necessary operating expenses; or

6 (C) market, produce, or provide a product or service ordinarily  
7 marketed, produced, or provided by the small business concern.

8 (b) IN GENERAL.—Except as to agricultural enterprises, to the extent  
9 and in such amounts as are provided in advance in appropriation Acts, the  
10 Administrator may make a loan (directly or in cooperation with a bank or  
11 other lending institution through an agreement to participate on an imme-  
12 diate or deferred basis) to assist a small business concern that has suffered  
13 or that is likely to suffer substantial economic injury as the result of an  
14 essential employee of the small business concern’s being ordered to active  
15 military duty during a period of military conflict.

16 (c) ELIGIBILITY PERIOD.—

17 (1) IN GENERAL.—A small business concern shall be eligible for as-  
18 sistance under this section during the period beginning on the date on  
19 which an essential employee is ordered to active duty and ending on  
20 the date that is one year after the date on which the essential employee  
21 is discharged or released from active duty.

22 (2) EXTENSION.—The Administrator may, when appropriate (as de-  
23 termined by the Administrator), extend the ending date specified in  
24 paragraph (1) by not more than one year.

25 (d) INTEREST RATE.—A loan or guarantee made under this section shall  
26 be made at the same interest rate as in the case of an economic injury loan  
27 under section 21302 of this title.

28 (e) LOAN AMOUNT.—

29 (1) IN GENERAL.—Except as provided in paragraph (2), no loan may  
30 be made under this section if the total amount outstanding and com-  
31 mitted to the borrower under the disaster loan program would exceed  
32 \$1,500,000.

33 (2) MAJOR SOURCE OF EMPLOYMENT.—If the Administrator deter-  
34 mines that the applicant constitutes a major source of employment in  
35 its surrounding area (including a borrower that was not a major source  
36 of employment before the disaster but became a major source of em-  
37 ployment after the disaster), as determined by the Administrator, the  
38 Administrator may waive the \$1,500,000 limitation under paragraph  
39 (1).

40 (f) PRECONSIDERATION PROCESS.—The Administrator shall establish a  
41 preconsideration process under which the Administrator—

1 (1) may collect all relevant materials necessary for processing a loan  
 2 to a small business concern under this section before a reservist expect-  
 3 ing activation who is employed by the small business concern is acti-  
 4 vated; and

5 (2) shall distribute funds for any loan approved under paragraph (1)  
 6 if the reservist expecting activation is activated.

7 (g) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

8 (1) IN GENERAL.—The Administrator, in consultation with the Sec-  
 9 retary of Veterans Affairs and the Secretary of Defense, may develop  
 10 a comprehensive outreach and technical assistance program (referred to  
 11 in this subsection as the “program”) to—

12 (A) market the loans available under this section to reservists  
 13 and family members of reservists (including both reservists that  
 14 are on active duty and reservists that are not on active duty); and

15 (B) provide technical assistance to a small business concern ap-  
 16 plying for a loan under this section.

17 (2) COMPONENTS.—The program shall—

18 (A) incorporate appropriate websites maintained by the Admin-  
 19 istration, the Department of Veterans Affairs, and the Depart-  
 20 ment of Defense; and

21 (B) require that information on the program be made available  
 22 to small business concerns directly through—

23 (i) the district offices and resource partners of the Admin-  
 24 istration, including small business development centers, wom-  
 25 en’s business centers, and the SCORE; and

26 (ii) the Department of Veterans Affairs, the Department of  
 27 Defense, and other Federal agencies.

28 (3) REPORT.—

29 (A) IN GENERAL.—The Administrator shall submit to Congress  
 30 a biannual report on the status of the program.

31 (B) CONTENTS.—A report under subparagraph (A) shall in-  
 32 clude—

33 (i) for the 6-month period ending on the date of the re-  
 34 port—

35 (I) the number of loans approved under this section;

36 (II) the number of loans disbursed under this section;

37 and

38 (III) the total amount disbursed under this section;

39 and

1 (ii) recommendations, if any, to make the program more ef-  
2 fective in serving small business concerns that employ reserv-  
3 ists.

4 (C) REPEAL.—This paragraph is repealed effective February 14,  
5 2011.

6 (h) NONCOLLATERALIZED LOANS.—

7 (1) IN GENERAL.—Notwithstanding any other provision of law, the  
8 Administrator may make a loan under this section of not more than  
9 \$50,000 without collateral.

10 (2) DEFERRAL OF PAYMENT.—The Administrator may defer pay-  
11 ment of principal and interest on a loan described in paragraph (1)  
12 during the longer of—

13 (A) the one-year period beginning on the date of the initial dis-  
14 bursement of the loan; or

15 (B) the period during which the essential employee is on active  
16 duty.

17 (i) PRIORITY.—The Administrator shall—

18 (1) give priority to any application for a loan under this section; and

19 (2) process and make a determination regarding applications under  
20 this section prior to processing or making a determination on other  
21 loan applications under the disaster loan program, on a rolling basis.

22 **§ 21304. Public awareness of disaster declaration and appli-**  
23 **cation periods**

24 (a) COORDINATION WITH FEMA.—

25 (1) IN GENERAL.—Notwithstanding any other provision of law, for  
26 any disaster declared under this chapter or major disaster (including  
27 any major disaster relating to which the Administrator declares eligi-  
28 bility for additional disaster assistance under section 21308 of this  
29 title), the Administrator, in consultation with the Administrator of the  
30 Federal Emergency Management Agency, shall ensure, to the max-  
31 imum extent practicable, that all application periods for disaster relief  
32 under this subtitle correspond with application deadlines established  
33 under the Robert T. Stafford Disaster Relief and Emergency Assist-  
34 ance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

35 (2) DEADLINES.—Notwithstanding any other provision of law, not  
36 later than 10 days before the closing date of an application period for  
37 a major disaster (including any major disaster relating to which the  
38 Administrator declares eligibility for additional disaster assistance  
39 under section 21308 of this title), the Administrator, in consultation  
40 with the Administrator of the Federal Emergency Management Agency,  
41 shall submit to the Committee on Small Business and Entrepreneur-

1 ship of the Senate and the Committee on Small Business of the House  
2 of Representatives a report that includes—

3 (A) the deadline for submitting applications for assistance under  
4 this subtitle relating to the major disaster;

5 (B) information regarding the number of loan applications and  
6 disbursements processed by the Administrator relating to the  
7 major disaster for each day during the period beginning on the  
8 date on which the major disaster was declared and ending on the  
9 date of the report; and

10 (C) an estimate of the number of potential applicants that have  
11 not submitted an application relating to the major disaster.

12 (b) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under  
13 this chapter or the Administrator declares eligibility for additional disaster  
14 assistance under section 21308 of this title, the Administrator shall make  
15 every effort to communicate through radio, television, print, and web-based  
16 outlets all relevant information needed by disaster loan applicants, includ-  
17 ing—

18 (1) the date of the declaration;

19 (2) the names of cities and towns within the disaster area;

20 (3) loan application deadlines related to the disaster;

21 (4) all relevant contact information for victim services available  
22 through the Administrator (including links to small business develop-  
23 ment center websites);

24 (5) links to relevant Federal and State disaster assistance websites,  
25 including links to websites providing information regarding assistance  
26 available from the Federal Emergency Management Agency;

27 (6) information on eligibility criteria for the disaster assistance pro-  
28 grams, including where loan applications can be found; and

29 (7) loan application materials that clearly state the function of the  
30 Administration as the Federal source of disaster loans for homeowners  
31 and renters.

32 (c) MARKETING AND OUTREACH.—The Administrator shall create a mar-  
33 keting and outreach plan that—

34 (1) encourages a proactive approach to the disaster relief efforts of  
35 the Administrator;

36 (2) makes clear the services provided by the Administrator, including  
37 contact information, application information, and timelines for submit-  
38 ting applications, the review of applications, and the disbursement of  
39 funds;

1 (3) describes each of the disaster assistance programs, including how  
 2 each disaster assistance program is made available and the eligibility  
 3 requirements for each disaster assistance program;

4 (4) provides for regional marketing, focusing on disasters occurring  
 5 in each Administration region before June 18, 2008, and likely sce-  
 6 narios for disasters in each Administration region; and

7 (5) ensures that the marketing plan is made available at small busi-  
 8 ness development centers and on the website of the Administration.

9 **§ 21305. Disaster loan processing**

10 (a) MAJOR DISASTER LOAN PROCESSING AND LOSS VERIFICATION BY  
 11 QUALIFIED PRIVATE CONTRACTORS.—

12 (1) MAJOR DISASTER LOAN PROCESSING.—The Administrator may  
 13 enter into an agreement with a qualified private contractor, as deter-  
 14 mined by the Administrator, to process loans under this chapter in the  
 15 event of a major disaster (including any major disaster relating to  
 16 which the Administrator declares eligibility for additional disaster as-  
 17 sistance under section 21308 of this title), under which the Adminis-  
 18 trator shall pay the contractor a fee for each loan processed.

19 (2) LOAN LOSS VERIFICATION.—The Administrator may enter into  
 20 an agreement with a qualified lender or loss verification professional,  
 21 as determined by the Administrator, to verify losses for loans under  
 22 this chapter in the event of a major disaster (including any major dis-  
 23 aster relating to which the Administrator declares eligibility for addi-  
 24 tional disaster assistance under section 21308 of this title), under  
 25 which the Administrator shall pay the lender or verification professional  
 26 a fee for each loan for which the lender or verification professional  
 27 verifies a loss.

28 (b) COORDINATION OF EFFORTS BETWEEN THE ADMINISTRATOR AND  
 29 THE COMMISSIONER OF INTERNAL REVENUE TO EXPEDITE LOAN PROC-  
 30 ESSING.—The Administrator and the Commissioner of Internal Revenue  
 31 shall, to the maximum extent practicable, ensure that all relevant and allow-  
 32 able tax records for loan approval are shared with loan processors in an ex-  
 33 pedited manner on request by the Administrator.

34 (c) INFORMATION TRACKING AND FOLLOWUP SYSTEM.—

35 (1) INFORMATION TRACKING.—

36 (A) IN GENERAL.—The Administrator shall develop, implement,  
 37 and maintain a centralized information system to track commu-  
 38 nications between Administration personnel and applicants for dis-  
 39 aster assistance.

40 (B) INFORMATION TO BE RECORDED.—The information system  
 41 shall ensure that when an applicant for disaster assistance com-

1            communicates with Administration personnel on a matter relating to  
2            the application, the following information is recorded:

- 3                    (i) The method of communication.  
4                    (ii) The date of the communication.  
5                    (iii) The identity of the Administration personnel.  
6                    (iv) A summary of the subject matter of the communica-  
7                    tion.

8            (2) FOLLOWUP.—The Administrator shall ensure that an applicant  
9            for disaster assistance receives, by telephone, mail, or electronic mail,  
10           followup communications from Administration personnel at all critical  
11           stages of the application process, including the following:

- 12                    (A) When Administration personnel determine that additional  
13                    information or documentation is required to process the applica-  
14                    tion.  
15                    (B) When Administration personnel determine whether to ap-  
16                    prove or deny the disaster assistance.  
17                    (C) When the primary contact person managing the application  
18                    for disaster assistance has changed.

19            (d) DISASTER ASSISTANCE PROCESSING REDUNDANCY.—The Adminis-  
20            trator shall ensure that the Administration has in place a facility for dis-  
21            aster assistance processing that, when the Administration’s primary facility  
22            for disaster loan processing becomes unavailable, is able to take over all dis-  
23            aster loan processing from the primary facility within 2 days.

24            **§ 21306. Disaster assistance employees**

25            (a) IN GENERAL.—In carrying out the disaster assistance programs, the  
26            Administrator may, where practicable, ensure that the number of full-time  
27            equivalent employees—

- 28                    (1) in the Office of the Disaster Assistance is not fewer than 800;  
29                    and  
30                    (2) in the Disaster Cadre of the Administration is not fewer than  
31                    1,000.

32            (b) REPORT.—In carrying out the disaster assistance programs, if the  
33            number of full-time employees for the Office of Disaster Assistance or the  
34            Disaster Cadre of the Administration is below the level required by sub-  
35            section (a) for that office, not later than 21 days after the date on which  
36            the staffing level decreases below the level required by subsection (a), the  
37            Administrator shall submit to the Committee on Appropriations and Com-  
38            mittee on Small Business and Entrepreneurship of the Senate and the Com-  
39            mittee on Appropriations and Committee on Small Business of the House  
40            of Representatives a report that—

- 41                    (1) details staffing levels on that date;



1 (2) requests, if practicable and determined to be appropriate by the  
2 Administrator, additional funds for additional employees; and

3 (3) contains such additional information as the Administrator deter-  
4 mines to be appropriate.

5 **§ 21307. Maximum loan amount**

6 (a) AGGREGATE LOAN AMOUNTS.—Except as provided in subsection (b),  
7 and notwithstanding any other provision of law, the aggregate loan amount  
8 outstanding and committed to a borrower under the disaster loan program  
9 shall not exceed \$2,000,000.

10 (b) WAIVER.—The Administrator may increase the aggregate loan  
11 amount under subsection (a) for loans relating to a disaster to a level estab-  
12 lished by the Administrator based on appropriate economic indicators for  
13 the region in which the disaster occurred.

14 **§ 21308. Declaration of eligibility for additional disaster as-**  
15 **sistance**

16 (a) DEFINITIONS.—In this section:

17 (1) ELIGIBLE SMALL BUSINESS CONCERN.—The term “eligible small  
18 business concern” means a small business concern—

19 (A) that has suffered major disaster-related substantial eco-  
20 nomic injury as a result of a major disaster; and

21 (B)(i) for which not less than 25 percent of the market share  
22 of the small business concern is from business transacted in the  
23 major disaster area;

24 (ii) for which not less than 25 percent of an input into a pro-  
25 duction process of the small business concern is from the major  
26 disaster area; or

27 (iii) that relies on a provider located in the major disaster area  
28 for a service that is not readily available elsewhere.

29 (2) MAJOR DISASTER-RELATED SUBSTANTIAL ECONOMIC INJURY.—  
30 The term “major disaster-related substantial economic injury” means  
31 economic harm to a business concern that results in the inability of the  
32 business concern to—

33 (A) meet its obligations as they mature;

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

35 (C) market, produce, or provide a product or service ordinarily  
36 marketed, produced, or provided by the business concern because  
37 the business concern relies on materials from the major disaster  
38 area or sells or markets in the major disaster area.

39 (b) DECLARATION OF ELIGIBILITY.—If the President declares a major  
40 disaster, the Administrator may declare eligibility for additional disaster as-  
41 sistance in accordance with this section.

1 (c) THRESHOLD.—A major disaster for which the Administrator declares  
 2 eligibility for additional disaster assistance under this section shall be a  
 3 major disaster that—

4 (1) results in—

5 (A) extraordinary levels of casualties or damage; or

6 (B) disruption severely affecting the population (including a  
 7 mass evacuation), the infrastructure, the environment, the econ-  
 8 omy, national morale, or government functions in an area;

9 (2) is comparable to a catastrophic incident described in the Admin-  
 10 istrator's national response plan (including any successor to the na-  
 11 tional response plan), unless the national response plan expires and  
 12 there is no successor to the plan, in which case this paragraph shall  
 13 be of no effect; and

14 (3) is of such size and scope that—

15 (A) the disaster loan program is incapable of providing adequate  
 16 and timely assistance to individuals or business concerns located  
 17 within the major disaster area; or

18 (B) a significant number of business concerns outside the major  
 19 disaster area have suffered major disaster-related substantial eco-  
 20 nomic injury as a result of the major disaster.

21 (d) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

22 (1) IN GENERAL.—If the Administrator declares eligibility for addi-  
 23 tional disaster assistance under this section, the Administrator may  
 24 make such loans under this subsection as the Administrator determines  
 25 to be appropriate to eligible small business concerns located anywhere  
 26 in the United States.

27 (2) PROCESSING TIME.—

28 (A) IN GENERAL.—If the Administrator determines that the av-  
 29 erage processing time for applications for disaster loans under this  
 30 subsection relating to a specific major disaster is more than 15  
 31 days, the Administrator shall give priority to the processing of  
 32 such applications submitted by eligible small business concerns lo-  
 33 cated inside the major disaster area until the Administrator deter-  
 34 mines that the average processing time for such applications is not  
 35 more than 15 days.

36 (B) SUSPENSION OF APPLICATIONS FROM OUTSIDE MAJOR DIS-  
 37 ASTER AREA.—If the Administrator determines that the average  
 38 processing time for applications for disaster loans under this sub-  
 39 subsection relating to a specific major disaster is more than 30 days,  
 40 the Administrator shall suspend the processing of such applica-  
 41 tions submitted by eligible small business concerns located outside

1           the major disaster area until the Administrator determines that  
2           the average processing time for such applications is not more than  
3           15 days.

4           (3) LOAN TERMS.—A loan under this subsection shall be made on  
5           the same terms as a loan under section 21302 of this title.

6   **§ 21309. Interest rates**

7           (a) IN GENERAL.—Notwithstanding any other provision of law, except as  
8           provided in subsection (b), the interest rate on the Administrator's share  
9           of a loan under the disaster loan program shall not exceed—

10           (1) the average annual interest rate on all interest-bearing obliga-  
11           tions of the United States then forming a part of the public debt as  
12           computed at the end of the fiscal year next preceding the date of the  
13           loan and adjusted to the nearest 0.125 percent; plus

14           (2) 0.25 percent.

15           (b) LOANS UNDER SECTION 21301 OR 21302.—

16           (1) IN GENERAL.—The interest rate for a loan under section 21301  
17           or 21302 of this title shall not exceed the rate of interest that is in  
18           effect at the time of the occurrence of the disaster.

19           (2) DETERMINATION.—Notwithstanding any other provision of law,  
20           the interest rate on the Federal share of a loan under section 21301  
21           or 21302 of this title, determined as of the date of the disaster, shall  
22           be—

23           (A) in the case of a homeowner unable to secure credit else-  
24           where, the lesser of—

25           (i) a rate prescribed by the Administrator, not to exceed  
26           half a rate determined by the Secretary of the Treasury tak-  
27           ing into consideration the current average market yield on  
28           outstanding marketable obligations of the United States with  
29           remaining periods to maturity comparable to the average ma-  
30           turities of such loans plus an additional charge of not to ex-  
31           ceed one percent per year as determined by the Adminis-  
32           trator, and adjusted to the nearest 0.125 percent; or

33           (ii) 4 percent per year;

34           (B) in the case of a homeowner able to secure credit elsewhere,  
35           the lesser of—

36           (i) a rate prescribed by the Administrator, not to exceed a  
37           rate determined by the Secretary of the Treasury taking into  
38           consideration the current average market yield on outstanding  
39           marketable obligations of the United States with remaining  
40           periods to maturity comparable to the average maturities of  
41           such loans plus an additional charge of not to exceed one per-

1 cent per year as determined by the Administrator, and ad-  
 2 justed to the nearest 0.125 percent; or

3 (ii) 8 percent per year;

4 (C) in the case of a business concern, private nonprofit organi-  
 5 zation, or other concern (including an agricultural cooperative) un-  
 6 able to obtain credit elsewhere, not to exceed 4 percent per year;  
 7 or

8 (D) in the case of a business concern able to obtain credit else-  
 9 where, a rate prescribed by the Administrator, not to exceed the  
 10 lowest of—

11 (i) the rate prevailing in the private market for similar  
 12 loans;

13 (ii) the rate prescribed by the Administrator as the max-  
 14 imum interest rate for deferred participation (guaranteed)  
 15 loans under the general business loan program; or

16 (iii) 8 percent per year.

17 **§ 21310. Maximum term**

18 No loan under the disaster loan program (including any renewal or exten-  
 19 sion of a loan) may be made for a period or periods exceeding—

20 (1) 30 years; or

21 (2) in the case of a loan to a business concern under section  
 22 21309(b)(2)(D) of this title that is able to obtain credit elsewhere, 3  
 23 years.

24 **§ 21311. Deferral of repayment**

25 (a) IN GENERAL.—In making a loan under this chapter, the Adminis-  
 26 trator may provide the person receiving the loan an option to defer repay-  
 27 ment on the loan.

28 (b) DEFERMENT PERIOD.—The period of a deferral under subsection  
 29 (a) shall not exceed 4 years.

30 **§ 21312. Suspension of payments**

31 (a) IN GENERAL.—The Administrator may consent to a suspension in the  
 32 payment of principal and interest on, and to an extension in the maturity  
 33 of, the Federal share of a loan under the disaster loan program, for a period  
 34 not to exceed 5 years, if—

35 (1) the borrower under the loan is a homeowner or a small business  
 36 concern;

37 (2) the loan was made to enable—

38 (A) the homeowner to repair or replace his or her home; or

39 (B) the small business concern to repair or replace plant or  
 40 equipment that was damaged or destroyed as the result of a dis-

1            aster described in clause (i) or (ii) of section 21302(b)(2)(A) of  
2            this title; and

3            (3) the Administrator determines that the suspension is necessary to  
4            avoid severe financial hardship.

5            (b) PURCHASE OF PARTICIPATION OR ASSUMPTION OF OBLIGATION.—  
6            During any period in which principal and interest charges are suspended  
7            under subsection (a), the Administrator shall, on the request of any person  
8            having a participation in the loan, purchase the participation, or assume the  
9            obligation of the borrower, for the balance of the period, to make principal  
10           and interest payments on the non-Federal share of the loan, if—

11           (1) the Administrator determines that the action is necessary to  
12           avoid a default; and

13           (2) the borrower agrees to make payments to the Administrator in  
14           an aggregate amount equal to the amount paid in the borrower's behalf  
15           by the Administrator, in such manner and at such times (during or  
16           after the term of the loan) as the Administrator determines having due  
17           regard for the purposes sought to be achieved by this subsection.

18           **§ 21313. Participation in loans on deferred basis**

19           In an agreement to participate in a loan on a deferred basis under the  
20           disaster loan program, participation by the Administrator shall not be in ex-  
21           cess of 90 percent of the balance of the loan outstanding at the time of  
22           disbursement.

23           **§ 21314. Assistance and counseling for disaster victims**

24           In administering the disaster assistance programs, to the maximum ex-  
25           tent possible, the Administrator shall provide assistance and counseling to  
26           disaster victims in—

27           (1) filing applications (including the provision of information relevant  
28           to loan processing); and

29           (2) loan closing and prompt disbursement of loan proceeds.

30           **§ 21315. Priority in allocating funds**

31           In administering the disaster assistance programs, to the maximum ex-  
32           tent possible, the Administrator shall give the disaster loan program a high  
33           priority in allocating funds for administrative expenses.

34           **§ 21316. Prohibition of cancellation of certain disaster loans**

35           No portion of a loan under section 21301 or 21302 of this title shall be  
36           subject to cancellation under any provision of law.

37           **§ 21317. Prohibition of net earnings clauses**

38           In making a loan under this chapter, the Administrator shall not require  
39           the borrower to pay any nonamortized amount for the first 5 years after  
40           repayment begins.

1 **§ 21318. Biennial disaster simulation exercise**

2 (a) IN GENERAL.—The Administrator shall conduct a disaster simulation  
3 exercise at least once every 2 fiscal years.

4 (b) REQUIREMENTS.—A disaster simulation exercise shall—

5 (1) include the participation of, at a minimum, not fewer than 50  
6 percent of the individuals in the disaster reserve corps; and

7 (2) test, at maximum capacity, all of the information technology and  
8 telecommunications systems of the Administrator that are vital to the  
9 activities of the Administrator during a disaster.

10 (c) REPORT.—The Administrator shall include in a report under section  
11 10717(g) of this title a report on a disaster simulation exercise conducted  
12 under subsection (a).

13 **§ 21319. Disaster planning responsibilities**

14 (a) DEFINITIONS.—In this section:

15 (1) DISASTER PLANNING OFFICER.—The term “disaster planning of-  
16 ficer” means the individual to whom the disaster planning function of  
17 the Administrator is assigned under subsection (b).

18 (2) STATE.—The term “State” means a State of the United States,  
19 the District of Columbia, Puerto Rico, the Northern Mariana Islands,  
20 the Virgin Islands, Guam, American Samoa, and any territory or pos-  
21 session of the United States.

22 (b) ASSIGNMENT OF SMALL BUSINESS ADMINISTRATION DISASTER  
23 PLANNING RESPONSIBILITIES.—The disaster planning function of the Ad-  
24 ministrator shall be assigned to an individual appointed by the Adminis-  
25 trator who—

26 (1) is not an employee of the Office of Disaster Assistance of the  
27 Administration;

28 (2) has proven management ability;

29 (3) has substantial knowledge in the field of disaster readiness and  
30 emergency response; and

31 (4) has demonstrated significant experience in the area of disaster  
32 planning.

33 (c) RESPONSIBILITIES.—The disaster planning officer shall report di-  
34 rectly and solely to the Administrator and shall be responsible for—

35 (1) developing, implementing, and maintaining the comprehensive  
36 disaster response plan under section 21320 of this title;

37 (2) ensuring that there are in-service and pre-service training proce-  
38 dures for the disaster response staff of the Administration;

39 (3) coordinating and directing the training exercises of the Adminis-  
40 tration relating to disasters, including disaster simulation exercises and  
41 disaster exercises coordinated with other government agencies; and

1           (4) other responsibilities relevant to disaster planning and readiness,  
2           as determined by the Administrator.

3           (d) COORDINATION.—In carrying out the responsibilities described in sub-  
4           section (c), the disaster planning officer shall coordinate with—

5           (1) the Office of Disaster Assistance of the Administration;

6           (2) the Administrator of the Federal Emergency Management Agen-  
7           cy; and

8           (3) other Federal, State, and local disaster planning offices, as nec-  
9           essary.

10          (e) RESOURCES.—The Administrator shall ensure that the disaster plan-  
11          ning officer has adequate resources to carry out the responsibilities de-  
12          scribed in subsection (c).

13          **§ 21320. Disaster response plan**

14          (a) DEFINITION OF STATE.—In this section, the term “State” means a  
15          State of the United States, the District of Columbia, Puerto Rico, the  
16          Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and  
17          any territory or possession of the United States.

18          (b) PLAN.—

19           (1) IN GENERAL.—The Administrator shall develop, implement, and  
20           maintain a comprehensive written disaster response plan.

21           (2) CONTENTS.—The disaster response plan shall include the fol-  
22           lowing:

23           (A) For each Administration region, a description of the disas-  
24           ters most likely to occur in the Administration region.

25           (B) For each disaster described under subparagraph (A)—

26           (i) an assessment of the disaster;

27           (ii) an assessment of the demand for Administration assist-  
28           ance most likely to occur in response to the disaster;

29           (iii) an assessment of the needs of the Administration, with  
30           respect to such resources as information technology, tele-  
31           communications, human resources, and office space, to meet  
32           the demand referred to in clause (ii); and

33           (iv) guidelines pursuant to which the Administrator will co-  
34           ordinate with other Federal agencies and with State and local  
35           authorities to best respond to the demand described in clause  
36           (ii) and to best use the resources referred to in that clause.

37          (c) PLAN REVISION.—The Administrator shall update the disaster re-  
38          sponse plan—

39           (1) annually; and

1 (2) following any major disaster relating to which the Administrator  
2 declares eligibility for additional disaster assistance under section  
3 21308 of this title.

4 (d) REQUIRED KNOWLEDGE.—The Administrator shall carry out sub-  
5 sections (b) and (c) through an individual with substantial knowledge in the  
6 field of disaster readiness and emergency response.

7 (e) REPORT.—The Administrator shall include in a report under section  
8 10717(g) of this title a report on the disaster response plan.

9 **§ 21321. Coordination of disaster assistance programs with**  
10 **FEMA**

11 (a) IN GENERAL.—The Administrator shall ensure that the disaster as-  
12 sistance programs of the Administration are coordinated, to the maximum  
13 extent practicable, with the disaster assistance programs of the Federal  
14 Emergency Management Agency.

15 (b) REGULATIONS.—

16 (1) IN GENERAL.—The Administrator, in consultation with the Ad-  
17 ministrator of the Federal Emergency Management Agency, shall es-  
18 tablish regulations to ensure that each application for disaster assist-  
19 ance is submitted as quickly as practicable to the Administration or di-  
20 rected to the appropriate agency under the circumstances.

21 (2) REVISION.—The regulations shall be revised annually.

22 (c) REPORT.—The Administrator shall include in a report under section  
23 10717(g) of this title a report on the regulations under subsection (b).

24 **§ 21322. Plans to secure sufficient office space**

25 (a) IN GENERAL.—The Administrator shall develop long-term plans to se-  
26 cure sufficient office space to accommodate an expanded workforce in times  
27 of disaster.

28 (b) REPORT.—The Administrator shall include in a report under section  
29 10717(g) of this title a report on the plans developed under subsection (a).

30 **§ 21323. Bond guarantees in procurements relating to a**  
31 **major disaster**

32 (a) IN GENERAL.—Except as provided in subsection (b), and notwith-  
33 standing any other provision of law, for any procurement relating to a major  
34 disaster, the Administrator may, on such terms and conditions as the Ad-  
35 ministrator may prescribe, guarantee and enter into commitments to guar-  
36 antee a surety against loss resulting from a breach of the terms of a bid  
37 bond, payment bond, performance bond, or bonds ancillary thereto, by a  
38 principal on any total work order or contract amount at the time of bond  
39 execution that does not exceed \$5,000,000.

40 (b) INCREASE IN AMOUNT.—On request of the head of any Federal agen-  
41 cy (other than the Administration) involved in reconstruction efforts in re-



1 sponse to a major disaster, the Administrator may guarantee and enter into  
 2 a commitment to guarantee a surety against loss under subsection (a) on  
 3 any total work order or contract amount at the time of bond execution that  
 4 does not exceed \$10,000,000.

5 (e) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may  
 6 carry out this section only with amounts appropriated in advance specifically  
 7 to carry out this section.

#### 8 **§ 21324. Civil penalty**

9 A person that wrongfully misapplies the proceeds of a loan made under  
 10 the disaster loan program shall be liable to the Administrator for a civil  
 11 penalty in the amount that is equal to 1.5 times the original principal  
 12 amount of the loan.

### 13 **CHAPTER 215—PRIVATE DISASTER ASSISTANCE** 14 **PROGRAM**

Sec.	
21501.	Definitions.
21502.	Program.
21503.	Use of loans.
21504.	Online applications.
21505.	Maximum amounts.
21506.	Terms and conditions.
21507.	Lenders.
21508.	Fees.
21509.	Documentation.
21510.	Purchase of loans.
21511.	Regulations.
21512.	Authorization of appropriations.

#### 15 **§ 21501. Definitions**

16 In this chapter:

17 (1) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an  
 18 individual who is eligible for disaster assistance under section 21301  
 19 of this title relating to a major disaster relating to which the Adminis-  
 20 trator declares eligibility for additional disaster assistance under sec-  
 21 tion 21308 of this title.

22 (2) MAJOR DISASTER AREA.—The term “major disaster area” means  
 23 an area for which the President declares a major disaster relating to  
 24 which the Administrator declares eligibility for additional disaster as-  
 25 sistance under section 21308 of this title, during the period of the  
 26 major disaster declaration.

27 (3) QUALIFIED PRIVATE LENDER.—The term “qualified private lend-  
 28 er” means a privately-owned bank or other lending institution that—

29 (A) is not a preferred lender; and

30 (B) the Administrator determines meets the criteria established  
 31 under section 20511 of this title.

1           (4) SMALL BUSINESS CONCERN.—The term “small business concern”  
2           means a small business concern (as defined in section 10101 or 30101  
3           of this title).

4           **§ 21502. Program**

5           The Administrator shall carry out a program, to be known as the private  
6           disaster assistance program, under which the Administrator may guarantee  
7           timely payment of principal and interest, as scheduled, on any loan made  
8           to a small business concern located in a major disaster area or to an eligible  
9           individual.

10          **§ 21503. Use of loans**

11          A loan guaranteed by the Administrator under this chapter may be used  
12          for any purpose authorized under chapter 213.

13          **§ 21504. Online applications**

14          (a) ESTABLISHMENT OF PROCESS.—The Administrator may establish, di-  
15          rectly or through an agreement with another entity, an online application  
16          process for loans guaranteed under this chapter.

17          (b) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate  
18          with the head of any other appropriate Federal agency so that any applica-  
19          tion submitted through an online application process established under this  
20          section may be considered for any other Federal assistance program for dis-  
21          aster relief.

22          (c) CONSULTATION.—In establishing an online application process under  
23          this section, the Administrator shall consult with appropriate persons from  
24          the public and private sectors, including private lenders.

25          **§ 21505. Maximum amounts**

26          (a) GUARANTEE PERCENTAGE.—The Administrator may guarantee not  
27          more than 85 percent of a loan under this chapter.

28          (b) LOAN AMOUNT.—The maximum amount of a loan guaranteed under  
29          this chapter shall be \$2,000,000.

30          **§ 21506. Terms and conditions**

31          A loan guaranteed under this chapter shall be made under the same  
32          terms and conditions as a loan under chapter 213.

33          **§ 21507. Lenders**

34          (a) IN GENERAL.—

35               (1) LOANS TO AN ELIGIBLE INDIVIDUAL.—A loan guaranteed under  
36               this chapter made to an eligible individual may be made by a preferred  
37               lender.

38               (2) LOANS TO A SMALL BUSINESS CONCERN.—A loan guaranteed  
39               under this chapter made to a small business concern may be made by  
40               a qualified private lender or by a preferred lender that also makes  
41               loans to eligible individuals.

1 (b) COMPLIANCE.—If the Administrator determines that a preferred lender  
 2 er knowingly failed to comply with the underwriting standards for loans  
 3 guaranteed under this chapter or violated the terms of the standard operating  
 4 procedure agreement between the preferred lender and the Administrator, the Administrator shall do one or both of the following:

5  
 6 (1) Exclude the preferred lender from participating in the private  
 7 disaster assistance program.

8 (2) Exclude the preferred lender from participating in the preferred  
 9 lender program for a period of not more than 5 years.

10 **§ 21508. Fees**

11 (a) IN GENERAL.—The Administrator shall not collect a guarantee fee  
 12 under this chapter.

13 (b) ORIGINATION FEE.—The Administrator may pay a qualified private  
 14 lender or preferred lender an origination fee for a loan guaranteed under  
 15 this chapter in an amount agreed on in advance between the qualified private  
 16 lender or preferred lender and the Administrator.

17 **§ 21509. Documentation**

18 (a) IN GENERAL.—A qualified private lender or preferred lender may use  
 19 its own loan documentation for a loan guaranteed by the Administrator  
 20 under this chapter, to the extent authorized by the Administrator.

21 (b) NOT PART OF QUALIFICATION CRITERIA.—The ability of a lender to  
 22 use its own loan documentation for a loan guaranteed under this chapter  
 23 shall not be considered part of the criteria for becoming a qualified private  
 24 lender under the regulations promulgated under section 21511 of this title.

25 **§ 21510. Purchase of loans**

26 The Administrator may enter into an agreement with a qualified private  
 27 lender or preferred lender to purchase any loan guaranteed under this chapter.  
 28

29 **§ 21511. Regulations**

30 The Administrator shall promulgate regulations establishing permanent  
 31 criteria for qualified private lenders.

32 **§ 21512. Authorization of appropriations**

33 (a) IN GENERAL.—Amounts necessary to carry out this chapter shall be  
 34 made available from amounts appropriated to the Administration to carry  
 35 out chapter 213.

36 (b) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND  
 37 CONDITIONS.—Funds appropriated to the Administration to carry out this  
 38 chapter may be used by the Administrator to meet the loan terms and conditions  
 39 specified in section 21506 of this title.

1           **CHAPTER 217—IMMEDIATE DISASTER ASSISTANCE**  
 2   **PROGRAM**

Sec.

21701. Definition of program.

21702. Program.

21703. Eligibility.

21704. Use of proceeds.

21705. Loan terms.

21706. Approval or disapproval.

3           **§ 21701. Definition of program**

4           In this chapter, the term “program” means the immediate disaster assist-  
 5           ance program established under section 21702 of this title.

6           **§ 21702. Program**

7           The Administrator shall carry out a program, to be known as the imme-  
 8           diate disaster assistance program, under which the Administrator partici-  
 9           pates on a deferred (guaranteed) basis in 85 percent of the balance of the  
 10          financing outstanding at the time of disbursement of the loan if the balance  
 11          is less than or equal to \$25,000 for business concerns affected by a disaster.

12          **§ 21703. Eligibility**

13          To receive a loan guarantee under section 21702 of this title, an appli-  
 14          cant shall apply for, and meet basic eligibility standards for, a loan under  
 15          chapter 213 or 215.

16          **§ 21704. Use of proceeds**

17          A business concern that receives a loan under chapter 213 or 215 shall  
 18          use the proceeds of the loan to repay all loans guaranteed under section  
 19          21702 of this title, if any, before using the proceeds for any other purpose.

20          **§ 21705. Loan terms**

21          (a) NO PREPAYMENT PENALTY.—There shall be no prepayment penalty  
 22          on a loan guaranteed under section 21702 of this title.

23          (b) REPAYMENT.—A business concern that receives a loan guaranteed  
 24          under section 21702 of this title and that is disapproved for a loan under  
 25          chapter 213 or 215 shall repay the loan guaranteed under section 21702  
 26          of this title not later than the date established by the Administrator, which  
 27          shall not be earlier than 10 years after the date on which the loan guaran-  
 28          teed under section 21702 of this title is disbursed.

29          **§ 21706. Approval or disapproval**

30          The Administrator shall ensure that each applicant for a loan under the  
 31          program receives a decision approving or disapproving the application within  
 32          36 hours after the Administrator receives the application.

33   **CHAPTER 219—EXPEDITED DISASTER ASSISTANCE**  
 34   **BUSINESS LOAN GUARANTEE PROGRAM**

Sec.

21901. Definition of program.

21902. Program.

21903. Consultation.

21904. Regulations.

1    **§ 21901. Definition of program**

2       In this chapter, the term “program” means the expedited disaster assist-  
3    ance business loan guarantee program established under section 21902 of  
4    this title.

5    **§ 21902. Program**

6       The Administrator shall establish and implement an expedited disaster  
7    assistance business loan guarantee program under which the Administrator  
8    may, on an expedited basis, guarantee timely payment of principal and in-  
9    terest, as scheduled on any loan made to an eligible small business concern  
10   under section 21308 of this title.

11   **§ 21903. Consultation**

12       In establishing the program, the Administrator shall consult with—

- 13           (1) appropriate personnel (including district office personnel) of the  
14       Administration;  
15           (2) appropriate technical assistance providers (including small busi-  
16       ness development centers);  
17           (3) appropriate lenders and credit unions; and  
18           (4) the Committee on Small Business and Entrepreneurship of the  
19       Senate and Committee on Small Business of the House of Representa-  
20       tives.

21   **§ 21904. Regulations**

22       (a) IN GENERAL.—The Administrator shall issue regulations establishing  
23    and implementing the program in accordance with this chapter.

24       (b) CONTENTS.—The regulations shall—

- 25           (1) identify whether appropriate uses of funds under the program  
26       may include—  
27           (A) paying employees;  
28           (B) paying bills and other financial obligations;  
29           (C) making repairs;  
30           (D) purchasing inventory;  
31           (E) restarting or operating a small business concern in the com-  
32       munity in which the small business concern was conducting oper-  
33       ations prior to the applicable major disaster or in a neighboring  
34       area in the disaster area; or  
35           (F) covering additional costs until the small business concern is  
36       able to obtain funding through insurance claims, Federal assist-  
37       ance programs, or other sources; and  
38           (2) set the terms and conditions of any loan made under the pro-  
39       gram.

1 (e) TERMS AND CONDITIONS.—A loan guaranteed by the Administrator  
2 under the program—

3 (1) shall be for not more than \$150,000;

4 (2) shall be a short-term loan, not to exceed 180 days, except that  
5 the Administrator may extend the term as the Administrator deter-  
6 mines to be appropriate on a case-by-case basis;

7 (3) shall have an interest rate not to exceed 300 basis points above  
8 the interest rate established by the Board of Governors of the Federal  
9 Reserve System that one bank charges another for reserves that are  
10 lent on an overnight basis on the date on which the loan is made;

11 (4) shall have no prepayment penalty;

12 (5) may be made only to a borrower that meets the requirements for  
13 a loan under chapter 213;

14 (6) may be refinanced as part of any subsequent disaster assistance  
15 provided under chapter 213;

16 (7) may receive expedited loss verification and loan processing, if the  
17 applicant—

18 (A) is a major source of employment in the disaster area (which  
19 shall be determined in the same manner as under section  
20 21303(e)(2) of this title); or

21 (B) is vital to recovery efforts in the region (including providing  
22 debris removal services, manufactured housing, or building mate-  
23 rials); and

24 (8) shall be subject to such additional terms as the Administrator  
25 determines to be appropriate.

26 **DIVISION E—BUSINESS DEVELOPMENT**  
27 **PROGRAM**

28 **CHAPTER 231—GENERAL PROVISIONS**

Sec.

23101. Definitions.

23102. Establishment of business development program.

23103. Unemployed or low-income individuals.

23104. Restrictions on activities of Administration employees.

23105. Encouragement of subcontracts.

23106. Federal contracts, subcontracts, and deposits.

23107. Business opportunity specialists.

23108. Requests for investigation.

29 **§ 23101. Definitions**

30 In this division:

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

1 (2) BUSINESS ACTIVITY TARGET.—The term “business activity tar-  
2 get” means a target contained in a business plan for contracts awarded  
3 other than through the program.

4 (3) BUSINESS OPPORTUNITY SPECIALIST.—The term “business op-  
5 portunity specialist” means an Administration employee responsible for  
6 providing business development assistance to a program participant.

7 (4) BUSINESS PLAN.—The term “business plan” means the business  
8 plan of a program participant under section 23318 of this title.

9 (5) DIRECTOR.—The term “Director” means the Director of the Di-  
10 vision.

11 (6) DISADVANTAGED OWNER.—The term “disadvantaged owner”  
12 means an individual on whom eligibility is based for participation in  
13 the business development program.

14 (7) DIVISION.—The term “Division” means the Division of Program  
15 Certification and Eligibility established by section 10308 of this title.

16 (8) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term  
17 “economically disadvantaged Indian tribe” means an Indian tribe that  
18 the Administrator determines to be economically disadvantaged based  
19 on consideration of available information such as—

20 (A) the per capita income of members of the Indian tribe, ex-  
21 cluding judgment awards;

22 (B) the percentage of the local Indian population below the pov-  
23 erty level; and

24 (C) the Indian tribe’s access to capital markets.

25 (9) EXECUTIVE AGENCY.—The term “executive agency” has the  
26 meaning given the term in section 4 of the Office of Federal Procure-  
27 ment Policy Act (41 U.S.C. 403).

28 (10) GRADUATE.—The term “graduate”, with reference to a pro-  
29 gram participant, means to graduate the program participant from the  
30 program under section 23320 of this title.

31 (11) INDIAN TRIBE.—The term “Indian tribe” means an Indian  
32 tribe, band, nation, or other organized group or community of Indians,  
33 including any Alaska Native village or regional or village corporation  
34 (within the meaning of the Alaska Native Claims Settlement Act (43  
35 U.S.C. 1601 et seq.)) that—

36 (A) is recognized as eligible for the special programs and serv-  
37 ices provided by the United States to Indians because of their sta-  
38 tus as Indians; or

39 (B) is recognized as such by the State in which the Indian tribe,  
40 band, nation, group, or community resides.

1 (12) PROGRAM.—The term “program” means the business develop-  
2 ment program.

3 (13) PROGRAM PARTICIPANT.—The term “program participant”  
4 means a small business concern that is participating in the program.

5 (14) PROGRAM PARTICIPATION PERIOD.—The term “program par-  
6 ticipation period”, with respect to a program participant, means the pe-  
7 riod of program participation applicable to the program participant  
8 under section 23329 of this title.

9 (15) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-  
10 CIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—

11 (A) IN GENERAL.—The term “small business concern owned  
12 and controlled by socially and economically disadvantaged individ-  
13 uals” means a small business concern—

14 (i) not less than 51 percent of which is unconditionally  
15 owned by—

16 (I) one or more socially and economically disadvan-  
17 taged individuals;

18 (II) an economically disadvantaged Indian tribe (or a  
19 wholly owned business entity of an economically dis-  
20 advantaged Indian tribe); or

21 (III) an economically disadvantaged Native Hawaiian  
22 organization; and

23 (ii) the management and daily business operations of which  
24 are controlled by one or more—

25 (I) socially and economically disadvantaged individ-  
26 uals;

27 (II) members of an economically disadvantaged Indian  
28 tribe; or

29 (III) Native Hawaiian organizations.

30 (B) SIZE DETERMINATION FOR INDIAN TRIBES.—In deter-  
31 mining the size of a concern owned by an economically disadvan-  
32 taged Indian tribe (or a wholly owned business entity of an eco-  
33 nomically disadvantaged Indian tribe) for purposes of subpara-  
34 graph (A), the concern’s size shall be independently determined  
35 without regard to its affiliation with the Indian tribe, any entity  
36 of the tribal government, or any other business enterprise owned  
37 by the Indian tribe, unless the Administrator determines that one  
38 or more such tribally owned business concerns have obtained, or  
39 are likely to obtain, a substantial unfair competitive advantage  
40 within an industry category.

41 (16) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—



1 (A) IN GENERAL.—The term “socially and economically dis-  
 2 advantaged individual” means a member of a group of socially dis-  
 3 advantaged individuals whose ability to compete in the free enter-  
 4 prise system has been impaired due to diminished capital and  
 5 credit opportunities as compared with others in the same business  
 6 area who are not socially disadvantaged.

7 (B) DETERMINATION OF DEGREE OF DIMINISHED CREDIT AND  
 8 CAPITAL OPPORTUNITIES.—In determining the degree of dimin-  
 9 ished credit and capital opportunities, the Administrator shall con-  
 10 sider the assets and net worth of a socially disadvantaged indi-  
 11 vidual.

12 (C) NET WORTH.—In computing personal net worth for pur-  
 13 poses of this paragraph, there shall be excluded—

14 (i) the value of investments that disadvantaged owners  
 15 have in their concern, except that the value of such invest-  
 16 ments shall be taken into account when comparing the con-  
 17 cern to other concerns in the same business area that are  
 18 owned by other than socially disadvantaged persons; and

19 (ii) the equity that disadvantaged owners have in their pri-  
 20 mary personal residences, except that any portion of such eq-  
 21 uity that is attributable to unduly excessive withdrawals from  
 22 a program participant or a concern applying for program par-  
 23 ticipation shall be taken into account.

24 (17) SOCIALLY DISADVANTAGED INDIVIDUAL.—

25 (A) IN GENERAL.—The term “socially disadvantaged indi-  
 26 vidual” means a member of a group of individuals who have been  
 27 subjected to racial or ethnic prejudice or cultural bias because of  
 28 their identity as members of the group without regard to their in-  
 29 dividual qualities.

30 (B) DETERMINATION.—

31 (i) IN GENERAL.—A determination under subparagraph  
 32 (A) with respect to whether a group has been subjected to  
 33 prejudice or bias shall be made by the Administrator after  
 34 consultation with the Associate Administrator for Minority  
 35 Small Business and Capital Ownership Development.

36 (ii) NONDELEGABILITY.—The authority of the Adminis-  
 37 trator under clause (i) may not be delegated.

38 (18) TERMINATE.—The term “terminate”, with reference to a pro-  
 39 gram participant, means to suspend or totally deny assistance to a pro-  
 40 gram participant under the program, prior to the graduation of the

1 program participant or prior to the expiration of the program partici-  
 2 pant's program participation period, under section 23321 of this title.

3 **§ 23102. Establishment of business development program**

4 There is established within the Administration the business development  
 5 program.

6 **§ 23103. Unemployed or low-income individuals**

7 The program shall be used to—

8 (1) assist in the establishment, preservation, and strengthening of  
 9 small business concerns and improve the managerial skills employed in  
 10 small business concerns, with special attention to, and particular em-  
 11 phasis on the preservation or establishment of, small business concerns  
 12 that are—

13 (A) located in urban or rural areas with high proportions of un-  
 14 employed or low-income individuals; or

15 (B) owned by low-income individuals; and

16 (2) mobilize for those objectives private as well as public managerial  
 17 skills and resources.

18 **§ 23104. Restrictions on activities of Administration employ-**  
 19 **ees**

20 (a) ACTIVITIES AND TRANSACTIONS RELATING TO OWNERSHIP OF A  
 21 PROGRAM PARTICIPANT.—

22 (1) IN GENERAL.—A person within the employ of the Administration  
 23 shall not, during the term of such employment and for a period of 2  
 24 years after the employment has been terminated, engage in any activity  
 25 or transaction described in paragraph (2) with respect to any program  
 26 participant during the person's term of employment, if the person par-  
 27 ticipated personally (directly or indirectly)—

28 (A) in decisionmaking responsibilities relating to the program  
 29 participant; or

30 (B) with respect to the administration of any assistance pro-  
 31 vided to program participants generally under the program.

32 (2) ACTIVITIES AND TRANSACTIONS.—The activities and transactions  
 33 referred to in paragraph (1) are—

34 (A) the buying, selling, or receiving (except by inheritance) of  
 35 any legal or beneficial ownership of stock or any other ownership  
 36 interest or the right to acquire any such interest;

37 (B) the entering into or execution of any written or oral agree-  
 38 ment (whether or not legally enforceable) to purchase or otherwise  
 39 obtain any right or interest described in subparagraph (A); and

40 (C) the receipt of any other benefit or right that may be an inci-  
 41 dent of ownership.

1 (3) ANNUAL CERTIFICATION.—

2 (A) IN GENERAL.—An employee described in subparagraph (B)  
3 shall annually submit to the Administrator a written certification  
4 regarding compliance with this section.

5 (B) EMPLOYEE.—The employees referred to in subparagraph

6 (A) are—

7 (i) a regional administrator;

8 (ii) a district director;

9 (iii) the Associate Administrator;

10 (iv) an employee whose principal duties relate to the award  
11 of contracts or the provision of other assistance under the  
12 program; and

13 (v) such other employees as the Administrator may des-  
14 ignate.

15 (4) CIVIL PENALTIES.—

16 (A) IN GENERAL.—An employee or former employee of the Ad-  
17 ministration who violates this section shall be subject to a civil  
18 penalty, assessed by the Attorney General, that shall not exceed  
19 300 percent of the maximum amount of gain that the employee  
20 realized or could have realized as a result of engaging in the activ-  
21 ity and transaction prohibited by paragraph (1).

22 (B) FALSE CERTIFICATION.—In addition to any other remedy  
23 or sanction provided for under law (including a regulation), a per-  
24 son who makes a false certification under paragraph (3)(A) shall  
25 be subject to a civil penalty under section 3802 of title 31.

26 (b) POLITICAL ACTIVITIES AND AFFILIATIONS.—

27 (1) PROHIBITION.—An employee of the Administration who has au-  
28 thority to take, direct others to take, recommend, or approve any action  
29 with respect to any program or activity under the program shall not,  
30 with respect to any such action, exercise or threaten to exercise that  
31 authority on the basis of the political activity or affiliation of any per-  
32 son.

33 (2) REPORTING OF SOLICITATION TO VIOLATE.—An employee of the  
34 Administration whose participation in a violation of paragraph (1) is  
35 directed or solicited shall expeditiously report the direction or solici-  
36 tation to the Inspector General of the Administration.

37 (3) DISCIPLINARY ACTION.—An employee of the Administration who  
38 willfully and knowingly violates paragraph (1) or (2) shall be subject  
39 to disciplinary action, which may consist of separation from service, re-  
40 duction in grade, suspension, or reprimand.

1 (4) APPLICABILITY.—Paragraphs (1) and (2) do not apply to an ac-  
2 tion taken as a penalty or other enforcement of a violation of any law  
3 (including a regulation) prohibiting or restricting political activity.

4 (5) OTHER PROHIBITIONS, MEASURES, AND LIABILITIES.—Para-  
5 graphs (1) to (4) are in addition to, and not in lieu of, any other prohi-  
6 bitions, measures, or liabilities that may arise under any other provi-  
7 sion of law.

#### 8 **§ 23105. Encouragement of subcontracts**

9 (a) IN GENERAL.—The Administrator shall encourage the placement of  
10 subcontracts by businesses with small business concerns located in areas of  
11 high concentration of unemployed or low-income individuals and with pro-  
12 gram participants.

13 (b) INCENTIVES AND ASSISTANCE.—The Administrator may provide in-  
14 centives and assistance to a business to aid in the training and upgrading  
15 of potential program participant subcontractors.

#### 16 **§ 23106. Federal contracts, subcontracts, and deposits**

17 The Administrator shall take such steps as are necessary and appro-  
18 priate, in coordination and cooperation with the heads of other Federal  
19 agencies, to ensure that contracts, subcontracts, and deposits made by the  
20 Federal Government or with programs aided with Federal funds are placed  
21 in such a way as to further the purposes of the program.

#### 22 **§ 23107. Business opportunity specialists**

23 (a) POSITION.—In each Administration field office responsible for assist-  
24 ing one or more program participants there shall be a position designated  
25 as a business opportunity specialist.

26 (b) ADEQUATE NUMBER.—To the maximum extent practicable, the Ad-  
27 ministrator shall ensure that an adequate number of business opportunity  
28 specialists are assigned to each district office to carry out the responsibil-  
29 ities of the program and to assist program participants.

30 (c) TRAINING.—The Administrator shall take such actions as are appro-  
31 priate to ensure that any person employed as a business opportunity spe-  
32 cialist receives adequate periodic training to ensure that the employee is ca-  
33 pable of assisting program participants in fully utilizing the program and  
34 meeting the requirements of this subtitle and subtitle I.

#### 35 **§ 23108. Requests for investigation**

36 The Committee on Small Business and Entrepreneurship of the Senate  
37 or the Committee on Small Business of the House of Representatives may  
38 request that the Office of the Inspector General of the Administration con-  
39 duct an investigation of any activity conducted under the program. Not later  
40 than 30 days after the receipt of such a request, the Inspector General shall  
41 inform the committee, in writing, of the disposition of the request.

**CHAPTER 233—CONTRACTING**

1

- Sec.
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2    **§ 23301. Contracting authority**

3       (a) IN GENERAL.—When the Administrator determines that such action  
4 is necessary or appropriate, the Administrator shall—

5           (1) enter into contracts with procuring agencies obligating the Ad-  
6 ministrator to furnish articles, equipment, supplies, services, or mate-  
7 rials to the Government or to perform construction work for the Gov-  
8 ernment; and

9           (2) arrange for the performance of such contracts by negotiating or  
10 otherwise letting a subcontract to one or more small business concerns  
11 owned and controlled by socially and economically disadvantaged indi-  
12 viduals—

13           (A) for the manufacture, supply, assembly of the articles, equip-  
14 ment, supplies, materials, or parts thereof, for the construction  
15 work, for the services, or for servicing or processing in connection  
16 with the manufacturing, construction, or services; or

17           (B) for such management services as are necessary to enable  
18 the Administrator to perform the contract.

1 (b) CONSTRUCTION SUBCONTRACTS.—To the maximum extent prac-  
 2 ticable, construction subcontracts awarded by the Administrator under the  
 3 program shall be awarded within the county or State in which the work is  
 4 to be performed.

5 (c) INAPPLICABILITY TO CERTAIN PROCUREMENTS.—The requirements  
 6 of the program do not apply to—

7 (1) a procurement under conditions described in—

8 (A) paragraph (2), (3), (4), (5), or (7) of section 303(e) of the  
 9 Federal Property and Administrative Services Act of 1949 (41  
 10 U.S.C. 253(e)); or

11 (B) paragraph (2), (3), (4), (5), or (7) of section 2304(c) of  
 12 title 10; or

13 (2) a procurement by an executive agency for which the head of the  
 14 executive agency makes a determination in writing, after consultation  
 15 with the Administrator and the Administrator for Federal Procurement  
 16 Policy, that it is not appropriate or reasonable to publish a notice be-  
 17 fore issuing a solicitation.

18 **§ 23302. Contracting procedure**

19 (a) IN GENERAL.—If the Administrator certifies to a contracting officer  
 20 of a procuring agency that the Administrator is competent and responsible  
 21 to perform a specific Government procurement contract to be let by the con-  
 22 tracting officer, the contracting officer may let the contract to the Adminis-  
 23 trator on such terms and conditions as may be agreed on between the Ad-  
 24 ministrator and the contracting officer.

25 (b) FAILURE TO AGREE.—

26 (1) IN GENERAL.—If the Administrator and the contracting officer  
 27 fail to agree on a procurement contract—

28 (A) not later than 5 days after the date on which the Adminis-  
 29 trator is notified of the contracting officer's adverse decision, the  
 30 Administrator may notify the contracting officer of the intent to  
 31 appeal the adverse decision; and

32 (B) not later than 15 days after that date, the Administrator  
 33 shall file a written request for a reconsideration of the adverse de-  
 34 cision with the head of the procuring agency.

35 (2) ADVERSE DECISION.—For the purposes of paragraph (1)(A), a  
 36 contracting officer's adverse decision includes—

37 (A) a decision not to make available for award under the pro-  
 38 gram a particular procurement requirement; and

39 (B) a failure to agree on the terms and conditions of a contract  
 40 to be awarded noncompetitively under the program.

1           (3) SUSPENSION OF ACTION.—On receipt of a notice of intent to ap-  
2           peal under paragraph (1)(A), the agency head shall suspend further ac-  
3           tion regarding the procurement until a written decision on the Adminis-  
4           trator’s request for reconsideration is issued by the agency head, unless  
5           the contracting officer makes a written determination that urgent and  
6           compelling circumstances that significantly affect interests of the  
7           United States will not permit waiting for a reconsideration of the ad-  
8           verse decision.

9           (4) DENIAL OF REQUEST FOR RECONSIDERATION.—If the Adminis-  
10          trator’s request for reconsideration is denied, the procuring agency  
11          head shall specify the reasons why the small business concern selected  
12          by the Administrator to perform the procurement requirement was de-  
13          termined to be incapable of performing the procurement requirement,  
14          and the findings supporting the determination, which shall be made a  
15          part of the contract file for the requirement.

16       **§ 23303. Fair market price**

17          (a) IN GENERAL.—A contract may not be awarded under the program  
18          if the award of the contract would result in a cost to the procuring agency  
19          that exceeds a fair market price.

20          (b) DETERMINATION.—

21            (1) IN GENERAL.—The fair market price under subsection (a) shall  
22            be determined by the procuring agency in accordance with this sub-  
23            section.

24            (2) NEW PROCUREMENT.—

25              (A) IN GENERAL.—The estimate of a current fair market price  
26              for a new procurement requirement, or a requirement that does  
27              not have a satisfactory procurement history, shall be derived from  
28              a price or cost analysis.

29              (B) FACTORS.—A price or cost analysis—

30                (i) may take into account prevailing market conditions,  
31                commercial prices for similar products or services, or data ob-  
32                tained from any other Federal agency; and

33                (ii) shall consider such cost or pricing data as may be time-  
34                ly submitted by the Administrator.

35            (3) PROCUREMENTS WITH SATISFACTORY PROCUREMENT HIS-  
36            TORY.—

37              (A) IN GENERAL.—The estimate of a current fair market price  
38              for a procurement requirement that has a satisfactory procure-  
39              ment history shall be based on recent award prices adjusted to en-  
40              sure comparability.

1 (B) ADJUSTMENT.—An adjustment under subparagraph (A)  
 2 shall take into account differences in quantities, performance  
 3 times, plans, specifications, transportation costs, packaging and  
 4 packing costs, labor and materials costs, overhead costs, and any  
 5 other additional costs that are considered appropriate.

6 (c) ESTIMATION METHOD.—

7 (1) IN GENERAL.—On the request of the Administrator, the pro-  
 8 curing agency shall promptly submit to the Administrator a written  
 9 statement detailing the method used by the procuring agency to esti-  
 10 mate the current fair market price for the contract, identifying the in-  
 11 formation, studies, analyses, and other data used by the procuring  
 12 agency.

13 (2) NONDISCLOSURE.—The procuring agency’s estimate of the cur-  
 14 rent fair market price and any supporting data furnished to the Ad-  
 15 ministrator shall not be disclosed to any potential offeror other than  
 16 the Administrator.

17 (d) PROTEST.—A small business concern selected by the Administrator  
 18 to perform or negotiate a contract to be let under the program may request  
 19 the Administrator to protest the procuring agency’s estimate of the fair  
 20 market price for the contract.

21 **§ 23304. Award after completion of program participation**  
 22 **period**

23 The Administrator shall make an award to a small business concern  
 24 owned and controlled by socially and economically disadvantaged individuals  
 25 that has completed its program participation period if—

26 (1) the contract will be awarded as a result of an offer (including  
 27 price) submitted in response to a published solicitation relating to a  
 28 competition conducted under section 23305 of this title; and

29 (2) the prospective contract awardee was a program participant eligi-  
 30 ble for award of the contract on the date specified for receipt of offers  
 31 contained in the contract solicitation.

32 **§ 23305. Award through competition**

33 (a) IN GENERAL.—Except as provided in subsections (b) and (c), a con-  
 34 tract opportunity offered for award under the program shall be awarded on  
 35 the basis of competition restricted to eligible program participants if—

36 (1) there is a reasonable expectation that—

37 (A) at least 2 eligible program participants will submit offers;  
 38 and

39 (B) an award can be made at a fair market price; and

40 (2) the anticipated award price of the contract (including options)  
 41 will exceed—



1 (A) \$5,000,000, in the case of a contract opportunity assigned  
 2 a North American Industry Classification System code for manu-  
 3 facturing; or

4 (B) \$3,000,000, in the case of any other contract opportunity.

5 (b) RESTRICTED COMPETITION FOR SMALLER CONTRACTS.—

6 (1) IN GENERAL.—The Associate Administrator may approve a re-  
 7 quest from a Federal agency to award a contract opportunity under the  
 8 program on the basis of a competition restricted to eligible program  
 9 participants even if the anticipated award price is not expected to ex-  
 10 ceed the dollar amounts specified in subsection (a)(2).

11 (2) APPROVALS.—Approvals under paragraph (1) shall be granted  
 12 only on a limited basis.

13 (3) NONDELEGABILITY.—The authority of the Associate Adminis-  
 14 trator under paragraph (1) may not be delegated.

15 (c) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY AN ECONOMI-  
 16 CALLY DISADVANTAGED INDIAN TRIBE.—Subsection (a) does not preclude  
 17 the award of a sole source contract under section 23307 of this title, with-  
 18 out regard to the anticipated award price of the contract, to a program par-  
 19 ticipant that is owned and controlled by an economically disadvantaged In-  
 20 dian tribe.

21 (d) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY NATIVE HA-  
 22 WAIIAN ORGANIZATIONS.—For purposes of contracting with agencies of the  
 23 Department of Defense, subsection (a) does not preclude the award of a sole  
 24 source contract under section 23307 of this title, without regard to the an-  
 25 ticipated award price of the contract, to a program participant that is  
 26 owned and controlled by a Native Hawaiian organization.

27 **§ 23306. Participation by program participants in negotia-**  
 28 **tion of contracts to be awarded noncompetitively**

29 A program participant selected by the Administrator to perform a con-  
 30 tract to be let noncompetitively under the program shall, when practicable,  
 31 participate in any negotiation of the terms and conditions of the contract.

32 **§ 23307. Sole source award**

33 (a) IN GENERAL.—The Administrator shall award a sole source contract  
 34 under the program to a program participant recommended by the Federal  
 35 agency offering the contract opportunity if—

36 (1) the program participant is determined to be a responsible con-  
 37 tractor with respect to performance of the contract;

38 (2) the award of the contract would be consistent with the program  
 39 participant's business plan; and

1 (3) the award of the contract would not result in the program par-  
 2 ticipant's exceeding the requirements established by section 23328 of  
 3 this title.

4 (b) **EQUITABLE GEOGRAPHIC DISTRIBUTION.**—To the maximum extent  
 5 practicable, the Administrator shall promote the equitable geographic dis-  
 6 tribution of sole source contracts awarded under this section.

7 **§ 23308. Annual certification regarding ownership and con-**  
 8 **trol**

9 A program participant shall annually certify that the program participant  
 10 meets the requirements of section 23101(15) of this title regarding owner-  
 11 ship and control.

12 **§ 23309. Annual submission regarding economic disadvan-**  
 13 **tage**

14 A program participant shall annually submit to the Administrator—

- 15 (1) a personal financial statement for each disadvantaged owner;  
 16 (2) a record of all payments made by the program participant to  
 17 each of its disadvantaged owners or to any person or entity affiliated  
 18 with its disadvantaged owners; and  
 19 (3) such other information as the Administrator considers necessary  
 20 to make the determinations required by paragraphs (8) and (16) of  
 21 section 23101 of this title and section 23310 of this title.

22 **§ 23310. Review of economic disadvantage and withdrawal**  
 23 **of assets**

24 (a) **ECONOMIC DISADVANTAGE.**—If, on the basis of information provided  
 25 by a program participant under section 23309 of this title or information  
 26 otherwise obtained by the Administrator, the Administrator has reason to  
 27 believe that the standards to establish economic disadvantage under section  
 28 23101(15) of this title are not met, the Administrator shall conduct a re-  
 29 view to determine whether the program participant and its disadvantaged  
 30 owners continue to be impaired in their ability to compete in the free enter-  
 31 prise system due to diminished capital and credit opportunities as compared  
 32 with others in the same business area who are not socially disadvantaged.

33 (b) **WITHDRAWAL OF ASSETS.**—

- 34 (1) **IN GENERAL.**—If, on the basis of information provided by a pro-  
 35 gram participant under section 23309 of this title or information other-  
 36 wise obtained by the Administrator, the Administrator has reason to  
 37 believe that the amount of funds or other assets withdrawn from a pro-  
 38 gram participant for the personal benefit of its disadvantaged owners  
 39 or any person or entity affiliated with its disadvantaged owners may  
 40 have been unduly excessive, the Administrator shall conduct a review  
 41 to determine whether the withdrawal of funds or other assets was detri-

1           mental to the achievement of the targets, objectives, and goals con-  
2           tained in the program participant's business plan.

3           (2) TERMINATION OR REQUIREMENT TO REINVEST ASSETS.—If the  
4           Administrator determines in a review under paragraph (1) that funds  
5           or other assets have been withdrawn to the detriment of the program  
6           participant's business, the Administrator shall—

7                   (A) initiate a proceeding to terminate the program participant  
8                   under section 23321 of this title; or

9                   (B) require an appropriate reinvestment of funds or other assets  
10                  and such other steps as the Administrator considers necessary to  
11                  ensure the protection of the program participant.

12   **§ 23311. Hearing on the record**

13           (a) OPPORTUNITY FOR HEARING.—Before taking an action described in  
14           subsection (b) with respect to a small business concern, the Administrator  
15           shall provide the small business concern an opportunity for a hearing on the  
16           record in accordance with chapter 5 of title 5.

17           (b) ACTIONS.—The actions referred to in subsection (a) are—

18                   (1) denial of admission to the program based on a determination  
19                  that—

20                           (A) a small business concern is not a small business concern  
21                           owned and controlled by socially and economically disadvantaged  
22                           individuals under section 23101(15) of this title;

23                           (B) one or more of the owners of a small business concern is  
24                           not a socially disadvantaged individual under section 23101(17) of  
25                           this title; or

26                           (C) one or more of the owners of a small business concern is  
27                           not a socially and economically disadvantaged individual under  
28                           section 23101(16);

29                   (2) graduation under section 23320 of this title;

30                   (3) termination under section 23321 of this title; and

31                   (4) denial of a request to issue a waiver under section 23316(b) of  
32                  this title.

33           (c) DECLINATION OF JURISDICTION.—The administrative law judge se-  
34           lected to preside over a proceeding under this section shall decline to accept  
35           jurisdiction over any matter that—

36                   (1) does not, on its face, allege facts that, if proven to be true, would  
37                   warrant reversal or modification of the Administrator's position;

38                   (2) is untimely filed;

39                   (3) is not filed in accordance with the rules of procedure governing  
40                  the proceeding; or

1 (4) has been decided by or is the subject of an adjudication before  
2 a court of competent jurisdiction over such matters.

3 (d) TIMING.—A proceeding under this section shall be completed and a  
4 decision rendered, insofar as practicable, not later than 90 days after a peti-  
5 tion for a hearing is filed with the Office of Hearings and Appeals.

6 (e) FINAL DECISION.—A decision rendered under this section shall be the  
7 final decision of the Administrator and shall be binding on the Adminis-  
8 trator and persons in the employ of the Administrator.

9 **§ 23312. Program participant capability**

10 (a) ELIGIBILITY FOR ASSISTANCE.—

11 (1) IN GENERAL.—A small business concern shall not be eligible for  
12 assistance under the program unless the Administrator determines that  
13 with contract, financial, technical, and management support, the small  
14 business concern—

15 (A) will be able to perform contracts that may be awarded to  
16 the small business concern under 23304 of this title; and

17 (B) has reasonable prospects for success in competing in the  
18 private sector.

19 (2) PERIOD OF OPERATION.—

20 (A) IN GENERAL.—The Administrator may prescribe a min-  
21 imum period of time during which a prospective program partici-  
22 pant must be in operation to meet the eligibility requirements of  
23 paragraph (1) only if the Administrator provides a waiver of the  
24 minimum period as provided in subparagraph (B).

25 (B) WAIVER.—The Administrator shall provide that any re-  
26 quirement that the Administrator establishes regarding the period  
27 of time during which a prospective program participant must have  
28 been in operation may be waived, and that a prospective program  
29 participant that otherwise meets the requirements of paragraph  
30 (1) shall be considered to have demonstrated reasonable prospects  
31 for success, if—

32 (i) the individual or individuals upon whom eligibility is to  
33 be based have substantial and demonstrated business man-  
34 agement experience;

35 (ii) the prospective program participant has demonstrated  
36 technical expertise to carry out its business plan with a sub-  
37 stantial likelihood for success;

38 (iii) the prospective program participant has adequate cap-  
39 ital to carry out its business plan;

40 (iv) the prospective program participant has a record of  
41 successful performance on contracts from governmental and

1 nongovernmental sources in the primary industry category in  
2 which the prospective program participant is seeking certifi-  
3 cation; and

4 (v) the prospective program participant has, or can dem-  
5 onstrate its ability to timely obtain, the personnel, facilities,  
6 equipment, and any other requirements needed to perform  
7 such contracts.

8 (b) CAPABILITY.—

9 (1) CAPABILITY STATEMENTS.—

10 (A) ANNUAL SUBMISSION.—A program participant shall annu-  
11 ally submit to the Administrator a capability statement.

12 (B) CONTENTS.—A capability statement shall—

13 (i) briefly describe the program participant's various con-  
14 tract performance capabilities; and

15 (ii) include the name and telephone number of the business  
16 opportunity specialist assigned the program participant.

17 (C) STATEMENT CATEGORIES.—The Administrator shall cat-  
18 egorize capability statements as—

19 (i) statements indicating capability primarily dependent on  
20 local contract support; and

21 (ii) statements indicating capability primarily requiring a  
22 national marketing effort.

23 (D) DISSEMINATION OF CAPABILITY STATEMENTS.—

24 (i) LOCAL.—The Administrator shall disseminate capability  
25 statements described in subparagraph (C)(i) to appropriate  
26 contracting activities in the marketing area of each program  
27 participant, respectively.

28 (ii) NATIONAL.—The Administrator shall disseminate capa-  
29 bility statements described in subparagraph (C)(ii) to the di-  
30 rectors of the offices of small and disadvantaged business uti-  
31 lization for the appropriate Federal agencies, who shall fur-  
32 ther distribute the capability statements to contracting activi-  
33 ties with Federal agencies that may purchase the types of  
34 items or services described in the capability statements.

35 (2) CONTACT BY CONTRACTING ACTIVITIES.—A contracting activity  
36 that receives a capability statement of a program participant under  
37 paragraph (1)(D) shall, within 60 days after receipt of the capability  
38 statement, contact the business opportunity specialist identified in the  
39 capability statement to indicate the number, type, and approximate dol-  
40 lar value of contract opportunities that the contracting activity may  
41 award over the succeeding 12-month period and that may be appro-

1            appropriate to consider for award to program participants for which the con-  
2            tracting activity has received capability statements.

3            (3) FORECAST OF CONTRACT OPPORTUNITIES.—

4            (A) IN GENERAL.—An executive agency that reports to the Fed-  
5            eral Procurement Data System contract actions with an aggregate  
6            value in excess of \$50,000,000 in any fiscal year shall—

7            (i) prepare a forecast of expected contract opportunities or  
8            classes of contract opportunities for the next and succeeding  
9            fiscal years that program participants are capable of per-  
10           forming; and

11           (ii) periodically revise the forecast during the following  
12           year.

13           (B) CONTENTS.—To the extent that the information is avail-  
14           able, a forecast under subparagraph (A) shall specify—

15           (i) the approximate number of individual contract opportu-  
16           nities (and the number of opportunities within a class);

17           (ii) the approximate dollar value, or range of dollar values,  
18           for each contract opportunity or class of contract opportuni-  
19           ties;

20           (iii) the anticipated time (by fiscal year quarter) for the  
21           issuance of a procurement request; and

22           (iv) the activity responsible for the award and administra-  
23           tion of the contract.

24           (C) SUBMISSION OF FORECASTS.—Not later than 10 days after  
25           completion of a forecast under subparagraph (A), the head of the  
26           executive agency that prepared the forecast shall submit the fore-  
27           cast to—

28           (i) the director of the office of small and disadvantaged  
29           business utilization established under section 25109 of this  
30           title for the executive agency; and

31           (ii) the Administrator.

32           (D) SCOPE OF INFORMATION REPORTED.—A forecast submitted  
33           under subparagraph (C) may be limited to classes of items and  
34           services for which there are substantial annual purchases.

35           (E) AVAILABILITY OF FORECASTS.—A forecast submitted under  
36           subparagraph (C) shall be available to small business concerns.

37           **§ 23313. Percentages of contract performance by program**  
38           **participants**

39           (a) IN GENERAL.—A program participant may not be awarded a contract  
40           under the program unless the program participant agrees that—

1 (1) in the case of a contract for services (except construction), at  
 2 least 50 percent of the cost of contract performance incurred for per-  
 3 sonnel shall be expended for employees of the program participant; and

4 (2) in the case of a contract for procurement of supplies (other than  
 5 procurement from a regular dealer in such supplies), the program par-  
 6 ticipant will perform work for at least 50 percent of the cost of manu-  
 7 facturing the supplies (not including the cost of materials).

8 (b) CHANGE IN PERCENTAGE.—

9 (1) IN GENERAL.—The Administrator may change the percentage  
 10 under paragraph (1) or (2) of subsection (a) if the Administrator de-  
 11 termines that a change is necessary to reflect conventional industry  
 12 practices among business concerns that are below the numerical size  
 13 standard for businesses in that industry category.

14 (2) LIMITATION.—A percentage established under paragraph (1)  
 15 may not differ from a percentage established under section 25113 of  
 16 this title.

17 (c) OTHER CATEGORIES OF CONTRACT.—

18 (1) IN GENERAL.—The Administrator shall by regulation establish  
 19 requirements similar to those specified in subsection (a) to be applica-  
 20 ble to—

21 (A) contracts for general and specialty construction; and

22 (B) contracts for any other industry category not otherwise sub-  
 23 ject to subsection (a).

24 (2) APPLICABLE PERCENTAGE.—The percentage applicable to a re-  
 25 quirement under paragraph (1) shall be determined in accordance with  
 26 subsection (b), except that such a percentage may not differ from a  
 27 percentage established under section 25113 of this title for the same  
 28 industry category.

29 **§ 23314. Wholesalers and retailers**

30 (a) IN GENERAL.—An otherwise responsible program participant that is  
 31 described in subsection (b) shall not be denied the opportunity to submit  
 32 and have considered its offer for a procurement contract for the supply of  
 33 a product to be let under the program or section 25101 of this title solely  
 34 because the program participant is other than the manufacturer or proc-  
 35 essor of the product to be supplied under the contract.

36 (b) REQUIREMENTS.—A program participant referred to in subsection (a)  
 37 is a program participant that—

38 (1) is primarily engaged in wholesale or retail trade;

39 (2) is a small business concern under the numerical size standard  
 40 for the North American Industry Classification System code assigned  
 41 to the contract solicitation on which the offer is being made;

1 (3) is a regular dealer (as defined under section 11 of the Act of  
2 June 30, 1936 (41 U.S.C. 43b) (commonly known as the Walsh-Healey  
3 Act)) in the product to be offered the Government; and

4 (4) represents that the program participant will supply the product  
5 of a domestic small business manufacturer or processor, unless a waiv-  
6 er of this paragraph is granted—

7 (A) by the Administrator, after reviewing a determination by  
8 the contracting officer that no small business manufacturer or  
9 processor can reasonably be expected to offer a product meeting  
10 the specifications (including period for performance) required of  
11 an offeror by the solicitation; or

12 (B) by the Administrator for a product (or class of products),  
13 after determining that no small business manufacturer or proc-  
14 essor is available to participate in the Federal procurement mar-  
15 ket.

16 **§ 23315. Reporting by program participants to business op-**  
17 **portunity specialists**

18 (a) IN GENERAL.—A program participant shall semiannually submit to  
19 its assigned business opportunity specialist a report identifying each agent,  
20 representative, attorney, accountant, consultant, or other person (other than  
21 an employee of the program participant) that received compensation during  
22 the reporting period to assist the program participant in obtaining a Fed-  
23 eral contract.

24 (b) CONTENTS.—A report under subsection (a) shall—

25 (1) disclose the amount of compensation received by each person  
26 identified in the report during the reporting period; and

27 (2) describe the activities performed for the compensation.

28 (c) REVIEW AND TRANSMITTAL.—The business opportunity specialist  
29 shall promptly—

30 (1) review the report; and

31 (2) transmit the report to the Associate Administrator.

32 (d) SUSPICION OF IMPROPER ACTIVITY.—The Associate Administrator  
33 shall transmit to the Inspector General of the Administration any report  
34 that raises a suspicion of improper activity.

35 (e) FAILURE TO SUBMIT REPORT.—A failure of a program participant  
36 to submit a report under subsection (a) shall constitute good cause for initi-  
37 ation of a termination proceeding under section 23321(b) of this title.

38 **§ 23316. Transfer of ownership or control**

39 (a) IN GENERAL.—



1 (1) PERFORMANCE BY CONTRACT AWARDEE.—A contract (including  
2 options) awarded under the program shall be performed by the pro-  
3 gram participant that is initially awarded the contract.

4 (2) RELINQUISHMENT OF OWNERSHIP OR CONTROL.—

5 (A) IN GENERAL.—Notwithstanding paragraph (1), if the owner  
6 or owners on whom eligibility for award of the contract was based  
7 relinquish ownership or control of the program participant, or  
8 enter into any agreement to relinquish such ownership or control,  
9 the contract or option shall be terminated for the convenience of  
10 the Government.

11 (B) NO DAMAGES.—No repurchase costs or other damages may  
12 be assessed against a program participant due solely to the oper-  
13 ation of subparagraph (A).

14 (b) WAIVER.—

15 (1) IN GENERAL.—The Administrator may waive subsection (a) only  
16 if—

17 (A)(i) it is necessary for the owner of the program participant  
18 to surrender partial control of the program participant on a tem-  
19 porary basis to obtain equity financing; and

20 (ii) the Administrator is requested to waive subsection (a) prior  
21 to the actual transfer of ownership or control;

22 (B)(i) the procuring agency head certifies that termination of  
23 the contract would severely impair attainment of the procuring  
24 agency's program objectives or missions; and

25 (ii) the Administrator is requested to waive subsection (a) prior  
26 to the actual transfer of ownership or control;

27 (C)(i) ownership and control of the program participant will  
28 pass to another program participant; and

29 (ii) the acquiring program participant would otherwise be eligi-  
30 ble to receive the award directly under the program;

31 (D)(i) due to incapacity or death, none of one or more individ-  
32 uals on whom eligibility was based is able to continue to exercise  
33 control of the program participant; and

34 (ii) the Administrator is requested to waive subsection (a) as  
35 soon as possible after the incapacity or death occurs; or

36 (E)(i) to raise equity capital, it is necessary for the disadvan-  
37 tagged owner of the program participant to transfer ownership of  
38 a majority of the voting stock of the program participant;

39 (ii) the program participant has exited the program;

1 (iii) the disadvantaged owner will maintain ownership of the  
 2 largest single outstanding block of voting stock (including stock  
 3 held by affiliated persons); and

4 (iv) the disadvantaged owner will maintain control of daily busi-  
 5 ness operations of the program participant.

6 (2) NONDELEGABILITY.—The authority of the Administrator under  
 7 paragraph (1) may not be delegated.

8 (c) NOTIFICATION OF AGREEMENT TO TRANSFER.—The owner of a pro-  
 9 gram participant that is performing a contract awarded under the program  
 10 shall notify the Administrator immediately on entering into an oral or writ-  
 11 ten agreement to transfer all or part of the stock or other ownership inter-  
 12 est in the program participant to any other person.

13 (d) TREATMENT OF CERTAIN POTENTIAL OWNERSHIP INTERESTS.—Not-  
 14 withstanding any other provision of law, for the purposes of determining  
 15 ownership and control of a program participant, any potential ownership in-  
 16 terest held by an investment company licensed under subtitle III shall be  
 17 treated in the same manner as an interest held by the individuals on whom  
 18 eligibility is based.

19 (e) CONTINUED ELIGIBILITY.—A program participant shall remain eligi-  
 20 ble for contracts under the program if there is a transfer of ownership and  
 21 control to individuals whom the Administrator determines to be socially and  
 22 economically disadvantaged. In the event of such a transfer, the transferee  
 23 program participant, if not terminated or graduated, shall be eligible for a  
 24 period of continued participation in the program for the remainder of the  
 25 program participation period of the transferor.

26 **§ 23317. Assistance for program participants**

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

28 (1) assist program participants in developing and maintaining com-  
 29 prehensive business plans that specify the program participant's spe-  
 30 cific business targets, objectives, and goals developed and maintained  
 31 in conformity with section 23318 of this title;

32 (2) provide for such other nonfinancial services as the Administrator  
 33 considers necessary for the establishment, preservation, and growth of  
 34 program participants;

35 (3) assist program participants in obtaining equity and debt financ-  
 36 ing;

37 (4) establish regular performance monitoring and reporting systems  
 38 for program participants to ensure compliance with their business  
 39 plans;

40 (5) analyze and report the causes of success and failure of program  
 41 participants; and

1 (6) provide assistance necessary to help program participants pro-  
2 cure surety bonds.

3 (b) NONFINANCIAL SERVICES.—Nonfinancial services provided under  
4 subsection (a)(2) may include—

- 5 (1) loan packaging;
- 6 (2) financial counseling;
- 7 (3) accounting and bookkeeping assistance;
- 8 (4) marketing assistance; and
- 9 (5) management assistance.

10 (c) SURETY BONDS.—Assistance provided under subsection (a)(6) may  
11 include—

- 12 (1) assistance in the preparation of application forms required to re-  
13 ceive a surety bond;
- 14 (2) special management and technical assistance designed to meet  
15 the specific needs of program participants that have received or are ap-  
16 plying for a surety bond; and
- 17 (3) preparation of all forms necessary to receive a surety bond guar-  
18 antee under chapter 321.

19 (d) OUTREACH PROGRAM.—

20 (1) IN GENERAL.—The Administrator shall develop and implement  
21 an outreach program to inform and recruit small business concerns to  
22 apply for eligibility for assistance under the program.

23 (2) ACTIVITIES.—The outreach program shall make a sustained and  
24 substantial effort to solicit applications for certification from—

25 (A) small business concerns located in areas of concentrated un-  
26 employment or underemployment or within labor surplus areas  
27 and within States having relatively few program participants; and

28 (B) small disadvantaged business concerns in industry cat-  
29 egories that have not substantially participated in the award of  
30 contracts under the program.

### 31 **§ 23318. Business plans**

32 (a) SUBMISSION.—Promptly after certification under section 23325 of  
33 this title, a program participant shall submit a business plan for review by  
34 the business opportunity specialist assigned to assist the program partici-  
35 pant.

36 (b) FORM; OBJECTIVE.—A business plan—

37 (1) may be a revision of a preliminary business plan submitted by  
38 the program participant or required by the Administrator as a part of  
39 the application for certification under the program; and

40 (2) shall be designed to result in the elimination by the program par-  
41 ticipant of the conditions or circumstances on which the Administrator

1           determined eligibility under paragraph (8) or (16) of section 23101 of  
2           this title.

3           (c) APPROVAL OF BUSINESS PLAN AS CONDITION ON CONTRACT  
4   AWARD.—Prior approval of a business plan by the business opportunity spe-  
5   cialist, and of subsequent modifications submitted under subsection (e),  
6   shall be a condition on the eligibility of a program participant for award  
7   of a contract under the program.

8           (d) CONTENTS.—A business plan shall include—

9           (1) an analysis of market potential, competitive environment, and  
10          other business analyses estimating the program participant’s prospects  
11          for profitable operations during the term of program participation and  
12          after graduation;

13          (2) an analysis of the program participant’s strengths and weak-  
14          nesses, with particular attention to correcting any financial, manage-  
15          rial, technical, or personnel conditions that are likely to impede the pro-  
16          gram participant in receiving contracts other than contracts awarded  
17          under the program;

18          (3) specific targets, objectives, and goals for the business develop-  
19          ment of the program participant during the next and succeeding years  
20          using the results of the analyses conducted under paragraphs (1) and  
21          (2);

22          (4) a transition management plan outlining specific steps to ensure  
23          profitable business operations after graduation (to be incorporated into  
24          the program participant’s plan during the first year of the transitional  
25          stage of program participation); and

26          (5) estimates of contract awards under the program and from other  
27          sources that the program participant will require to meet the specific  
28          targets, objectives, and goals for the years covered by the business  
29          plan, which estimates shall be consistent with section 23328 of this  
30          title and other applicable provisions of this chapter.

31          (e) ANNUAL REVIEW.—

32                  (1) IN GENERAL.—A program participant shall annually review its  
33                  currently approved business plan with its business opportunity spe-  
34                  cialist and modify the business plan as appropriate.

35                  (2) APPROVAL.—

36                          (A) SUBMISSION.—A modified business plan shall be submitted  
37                          to the Administrator for approval.

38                          (B) CONTINUED VALIDITY OF CURRENT PLAN.—The currently  
39                          approved business plan shall be valid until such time as a modified  
40                          business plan is approved by the business opportunity specialist.

1           (3) TRANSITIONAL STAGE.—Annual reviews pertaining to years in  
 2           the transitional stage of program participation shall require, as appro-  
 3           priate, a written verification that the program participant has complied  
 4           with the requirements of section 23328 of this title relating to attain-  
 5           ing business activity from sources other than contracts awarded under  
 6           the program.

7           (f) ANNUAL NEEDS FORECAST.—

8           (1) IN GENERAL.—During the review of its plan conducted under  
 9           subsection (e), a program participant shall annually forecast its needs  
 10          for contract awards under the program for the next program year and  
 11          the succeeding program year.

12          (2) INCLUSION IN BUSINESS PLAN.—An annual needs forecast shall  
 13          be included in a program participant's business plan.

14          (3) CONTENTS.—An annual needs forecast shall include—

15               (A) the aggregate dollar value of contract support to be sought  
 16               on a noncompetitive basis under the program, reflecting compli-  
 17               ance with the requirements of section 23328 of this title relating  
 18               to attaining business activity from sources other than contracts  
 19               awarded under the program;

20               (B) the types of contract opportunities being sought, identified  
 21               by North American Industry Classification System code or other-  
 22               wise;

23               (C) an estimate of the dollar value of contract support to be  
 24               sought on a competitive basis; and

25               (D) such other information the business opportunity specialist  
 26               may request to provide effective business development assistance  
 27               to the program participant.

28          (g) LOGICAL BUSINESS PROGRESSION.—Limitations established by the  
 29          Administrator restricting the award of contracts under the program to a  
 30          limited number of North American Industry Classification System codes in  
 31          an approved business plan shall not be applied in a manner that inhibits  
 32          the logical business progression by a program participant into areas of in-  
 33          dustrial endeavor in which the program participant has potential for suc-  
 34          cess.

35          **§ 23319. Denial of further assistance**

36          (a) IN GENERAL.—A program participant shall be denied any assistance  
 37          under the program if the program participant—

38               (1) voluntarily elects not to continue participation;

39               (2) completes its program participation period;

40               (3) is graduated; or

41               (4) is terminated.

1 (b) NO SUBSEQUENT RECERTIFICATION.—If participation in the program  
 2 by a program participant is concluded for any of the reasons described in  
 3 subsection (a), the former program participant shall not subsequently be re-  
 4 certified for participation in the program.

5 **§ 23320. Graduation**

6 A program participant shall be graduated from the program—

7 (1) when a program participant successfully completes the program  
 8 by substantially achieving the targets, objectives, and goals contained  
 9 in the program participant’s business plan, thereby demonstrating the  
 10 ability of the program participant to compete in the marketplace with-  
 11 out assistance under the program; or

12 (2) if, in a review of economic disadvantage under section 23310(a)  
 13 of this title, the Administrator determines that the program participant  
 14 and its disadvantaged owners are no longer economically disadvan-  
 15 taged.

16 **§ 23321. Termination**

17 (a) BASIS FOR TERMINATION.—

18 (1) IN GENERAL.—Termination from the program shall be based on  
 19 good cause.

20 (2) GOOD CAUSE.—For purposes of paragraph (1), good cause in-  
 21 cludes—

22 (A) the failure of a program participant to maintain eligibility  
 23 for program participation;

24 (B) the failure of a program participant to engage in business  
 25 practices that will promote its competitiveness within a reasonable  
 26 period of time as evidenced by, among other indicators, a pattern  
 27 of unjustified delinquent performance or terminations for default  
 28 with respect to contracts awarded under the program;

29 (C) a demonstrated pattern of failing to make required submis-  
 30 sions or responses to the Administrator in a timely manner;

31 (D) the willful violation of any regulation of the Administrator  
 32 pertaining to a material issue;

33 (E) the debarment of a program participant or its disadvan-  
 34 taged owners by any agency under subpart 9.4 of title 48, Code  
 35 of Federal Regulations (or any successor regulation); and

36 (F) the conviction of the disadvantaged owner or an officer of  
 37 a program participant for an offense indicating a lack of business  
 38 integrity (including a conviction for embezzlement, theft, forgery,  
 39 bribery, falsification, or violation of chapter 105).

40 (3) TERMINATION FOR CONVICTION.—For purposes of paragraph  
 41 (2)(F), a termination action shall not be taken with respect to a dis-



1 (c) EXCEPTION.—An economically disadvantaged Indian tribe may own  
2 more than one small business concern eligible for assistance under the pro-  
3 gram if—

4 (1) the Indian tribe does not own another concern in the same indus-  
5 try that has been determined to be eligible to receive contracts under  
6 the program; and

7 (2) the individuals responsible for the management and daily oper-  
8 ations of the concern do not manage more than 2 program partici-  
9 pants.

10 **§ 23324. Limitation on denial of admission into program**  
11 **based on unavailability of specific contract oppor-**  
12 **tunities**

13 An applicant shall not be denied admission into the program based solely  
14 on a determination that specific contract opportunities are unavailable to as-  
15 sist in the development of the applicant unless—

16 (1) the Government has not previously procured and is unlikely to  
17 procure the types of products or services offered by the applicant; or

18 (2) the purchases of such products or services by the Government  
19 will not be in quantities sufficient to support the developmental needs  
20 of the applicant and other program participants providing the same or  
21 similar products or services.

22 **§ 23325. Certification decision**

23 Not later than 90 days after receipt of a completed application for pro-  
24 gram certification, the Associate Administrator shall—

25 (1) certify a small business concern as a program participant; or

26 (2) deny the application.

27 **§ 23326. Review of new entrants into the program**

28 (a) REVIEW.—Thirty days before the conclusion of each fiscal year, the  
29 Director shall review all small business concerns that have been admitted  
30 into the program during the preceding 12-month period.

31 (b) DETERMINATION AND ESTIMATE.—In a review under subsection (a),  
32 the Director shall—

33 (1) determine the number of entrants and their geographic distribu-  
34 tion and industrial classification; and

35 (2) estimate—

36 (A) the expected growth of the program during the next fiscal  
37 year; and

38 (B) the number of additional business opportunity specialists, if  
39 any, that will be needed to meet the anticipated demand for the  
40 program.



1 (c) REPORT.—Not later than September 30 of each year, the Director  
2 shall report to the Associate Administrator the determination and estimates  
3 made under subsection (b).

4 (d) DIRECTIVES.—

5 (1) IN GENERAL.—Based on the report under subsection (c) and  
6 such additional data as are relevant, the Associate Administrator shall,  
7 not later than October 31 of each fiscal year, issue policy and program  
8 directives applicable to the fiscal year that—

9 (A) establish priorities for the solicitation of program applica-  
10 tions from underrepresented regions and industry categories;

11 (B) assign staffing levels and allocate other program resources  
12 as necessary to meet program needs; and

13 (C) establish priorities in the processing and admission of new  
14 program participants as necessary to achieve an equitable geo-  
15 graphic distribution of small business concerns and a distribution  
16 of concerns across all industry categories in proportions needed to  
17 increase significantly contract awards to small business concerns  
18 owned and controlled by socially and economically disadvantaged  
19 individuals.

20 (2) CONSIDERATIONS.—In considering an increase described in para-  
21 graph (1)(C), the Associate Administrator shall give due consideration  
22 to industrial categories in which Federal purchases have been substan-  
23 tial but in which the participation rate of small business concerns  
24 owned and controlled by socially and economically disadvantaged indi-  
25 viduals has been limited.

26 **§ 23327. Program stages**

27 (a) IN GENERAL.—The Administrator shall segment a program partici-  
28 pant's participation in the program into a developmental stage and a transi-  
29 tional stage.

30 (b) DEVELOPMENTAL STAGE.—The developmental stage of program parti-  
31 cipation shall be designed to assist a program participant in its effort to  
32 overcome its economic disadvantage by providing such assistance as is nec-  
33 essary and appropriate to access markets and strengthen its financial and  
34 managerial skills.

35 (c) TRANSITIONAL STAGE.—The transitional stage of program participa-  
36 tion shall be designed to overcome, insofar as practicable, the remaining ele-  
37 ments of economic disadvantage and to prepare a program participant for  
38 graduation from the program.

39 (d) AVAILABLE ASSISTANCE.—

40 (1) IN GENERAL.—A program participant, if otherwise eligible, shall  
41 be qualified to receive assistance as provided in this subsection.

1           (2) CONTRACT SUPPORT.—A program participant in the develop-  
2           mental stage or transitional stage shall be qualified to receive contract  
3           support under the program.

4           (3) FINANCIAL ASSISTANCE.—A program participant in the develop-  
5           mental stage or transitional stage shall be qualified to receive financial  
6           assistance under section 20511 of this title.

7           (4) EMPLOYEE SKILLS TRAINING OR UPGRADING.—

8           (A) DEFINITION OF TRAINING PROVIDER.—In this paragraph,  
9           the term “training provider” means an institution of higher edu-  
10          cation, a community or vocational college, or an institution eligible  
11          to provide skills training or upgrading under title I of the Work-  
12          force Investment Act of 1998 (29 U.S.C. 2801 et seq.).

13          (B) IN GENERAL.—A program participant in the developmental  
14          stage shall be qualified to receive financial assistance under which  
15          the Administrator may, without regard to section 10331(l) of this  
16          title, purchase in whole or in part, on behalf of the program par-  
17          ticipant, skills training or upgrading for employees or potential  
18          employees of the program participant.

19          (C) FORM OF ASSISTANCE.—Financial assistance under sub-  
20          paragraph (B) may be made—

21                 (i) by direct payment to the training provider; or

22                 (ii) by reimbursing the program participant or the program  
23                 participant’s employee, if the Administrator considers reim-  
24                 bursement to be reasonable and appropriate.

25          (D) LIMITATION.—Financial assistance under subparagraph (B)  
26          shall not be granted to a program participant unless the program  
27          participant first documents that the program participant has ex-  
28          plored the use of existing cost-free or cost-subsidized training pro-  
29          grams offered by public and private sector agencies working with  
30          programs of employment and training and economic development.

31          (E) NUMBER OF EMPLOYEES.—Not more than 5 employees or  
32          potential employees of the program participant are recipients of  
33          skills training or upgrading under subparagraph (B) at any one  
34          time.

35          (F) AMOUNT.—Not more than \$2,500 shall be made available  
36          for any one employee or potential employee for skills training or  
37          upgrading under subparagraph (B).

38          (G) LENGTH OF TRAINING OR UPGRADING.—The length of  
39          training or upgrading financed under subparagraph (B) shall be  
40          not less than one nor more than 6 months.

41          (H) LENGTH OF EMPLOYMENT.—

1 (i) ASSURANCES.—Financial assistance under subpara-  
2 graph (B) shall not be granted to a program participant un-  
3 less—

4 (I) the program participant has given adequate assur-  
5 ance that it will employ the trainee or upgraded em-  
6 ployee for a period of at least 6 months after the train-  
7 ing or upgrading financed under subparagraph (B) has  
8 been completed; and

9 (II) each trainee or upgraded employee has given a  
10 similar assurance to remain within the employ of the  
11 program participant for that period.

12 (ii) BREACH.—If a program participant, trainee, or up-  
13 graded employee fails to fulfill the assurance under clause  
14 (i)—

15 (I) the Administrator shall be entitled to, and shall  
16 make diligent efforts to obtain from the violating pro-  
17 gram participant, trainee, or upgraded employee, the re-  
18 payment of all funds expended on behalf of the program  
19 participant, trainee, or upgraded employee;

20 (II) such repayment shall be made to the Adminis-  
21 trator with such interest and costs of collection as are  
22 reasonable; and

23 (III) the program participant, trainee, or upgraded  
24 employee shall be barred from receiving any further as-  
25 sistance under subparagraph (B).

26 (I) LOCATION.—Training or upgrading financed under subpara-  
27 graph (B) may take place at a facility of the program participant  
28 or of the training provider.

29 (J) RECORDS.—A program participant that receives assistance  
30 under subparagraph (B) shall maintain such records as the Ad-  
31 ministrator considers appropriate to ensure that this subsection  
32 and any other applicable law have not been violated.

33 (K) REGULATIONS.—The Administrator shall, in consultation  
34 with the Secretary of Labor, promulgate regulations to implement  
35 this paragraph that establish acceptable training and upgrading  
36 performance standards and provide for such monitoring or audit  
37 requirements as are necessary to ensure the integrity of the train-  
38 ing effort.

39 (5) TECHNOLOGY AND SURPLUS PROPERTY TRANSFER.—

1 (A) IN GENERAL.—A program participant in the developmental  
2 stage or transitional stage shall be qualified to receive the transfer  
3 of technology or surplus property owned by the United States.

4 (B) EFFECTUATION.—Activities designed to effect transfers  
5 under subparagraph (A)—

6 (i) shall be developed in cooperation with the heads of Fed-  
7 eral agencies; and

8 (ii) shall include the transfer by grant, license, or sale of  
9 technology or property to program participants.

10 (C) PRIORITY.—Property under subparagraph (A) may be  
11 transferred to program participants on a priority basis.

12 (D) USE.—Technology or property transferred under subpara-  
13 graph (A)—

14 (i) shall be used by a program participant during the nor-  
15 mal conduct of its business operation; and

16 (ii) shall not be sold or transferred to any other person  
17 (other than the Government) until one year after the program  
18 participant's term of participation.

19 (6) TRAINING IN THE DEVELOPMENT OF BUSINESS PRINCIPLES AND  
20 STRATEGIES.—A program participant in the developmental stage or  
21 transitional stage shall be qualified to receive training assistance under  
22 which the Administrator shall conduct training sessions to assist pro-  
23 gram participants in the development of business principles and strate-  
24 gies to enhance their ability to compete successfully for contracts in the  
25 marketplace.

26 (7) PARTICIPATION IN JOINT VENTURES, LEADER-FOLLOWER AR-  
27 RANGEMENTS, AND TEAMING AGREEMENTS.—

28 (A) IN GENERAL.—A program participant in the transitional  
29 stage shall be qualified to participate in joint ventures, leader-fol-  
30 lower arrangements, and teaming agreements between the pro-  
31 gram participant and other program participants and other busi-  
32 ness concerns with respect to contracting opportunities for the re-  
33 search, development, full-scale engineering, or production of major  
34 systems.

35 (B) AGENCY PROGRAMS.—Activities under subparagraph (A)  
36 shall be undertaken on the basis of programs developed by the  
37 Federal agency responsible for the procurement of the major sys-  
38 tem, with the assistance of the Administrator.

39 (8) BUSINESS PLANNING TRAINING AND TECHNICAL ASSISTANCE.—  
40 A program participant in the transitional stage shall be qualified to re-

1           ceive transitional management business planning training and technical  
2           assistance.

3   **§ 23328. Attainment of business activity targets**

4           (a) DEVELOPMENTAL STAGE.—During the developmental stage of partici-  
5           pation in the program, a program participant shall take all reasonable ef-  
6           forts within its control to attain the business activity targets contained in  
7           its business plan. Those efforts shall be made a part of the business plan  
8           and shall be sufficient in scope and duration to satisfy the Administrator  
9           that the program participant will engage a reasonable marketing strategy  
10          that will maximize its potential to attain its business activity targets.

11          (b) TRANSITIONAL STAGE.—

12           (1) IN GENERAL.—During the transitional stage of participation in  
13           the program, a program participant shall be subject to regulations re-  
14           garding business activity targets that are promulgated by the Adminis-  
15           trator.

16           (2) ESTABLISHMENT OF BUSINESS ACTIVITY TARGETS.—The regula-  
17           tions under paragraph (1) shall establish business activity targets ap-  
18           plicable to program participants during the fifth year and each suc-  
19           ceeding year of program participation. The business activity targets,  
20           for that period of time, shall reflect a reasonably consistent increase  
21           in contracts awarded other than under the program, expressed as a  
22           percentage of total sales.

23           (3) ATTAINMENT.—The regulations under paragraph (1) shall re-  
24           quire a program participant to attain its business activity targets.

25           (4) CERTIFICATION OF COMPLIANCE.—The regulations under para-  
26           graph (1) shall provide that, before the receipt of any contract to be  
27           awarded under the program, the program participant (if it is in the  
28           transitional stage) shall certify that it—

29                   (A) has complied with the regulations; or

30                   (B) is in compliance with such remedial measures as have been  
31                   ordered under regulations promulgated under paragraph (6).

32           (5) PERFORMANCE REVIEW.—The regulations under paragraph (1)  
33           shall require the Administrator to review a program participant's per-  
34           formance regarding attainment of business activity targets during peri-  
35           odic reviews of the program participant's business plan.

36           (6) REMEDIAL MEASURES.—

37                   (A) IN GENERAL.—The regulations under paragraph (1) shall  
38                   authorize the Administrator to take appropriate remedial measures  
39                   with respect to a program participant that fails to attain a re-  
40                   quired business activity target for the purpose of reducing the pro-

1           gram participant's dependence on contracts awarded under the  
2           program.

3           (B) MEASURES.—Remedial measures may include—

4                 (i) assisting the program participant in expanding the dol-  
5                 lar volume of its competitive business activity; and

6                 (ii) limiting the dollar volume of contracts awarded to the  
7                 program participant under the program.

8           (C) NONREVIEWABILITY.—Except for a remedial measure that  
9           would constitute a termination, a remedial measure taken under  
10           this paragraph shall not be reviewable under section 23311 of this  
11           title.

### 12   **§ 23329. Program participation period**

13           A program participant may receive assistance under the program for a  
14           total period of not longer than 9 years, measured from the date of its cer-  
15           tification under section 23325 of this title, of which—

16                 (1) not more than 4 years may be spent in the developmental stage  
17                 of program participation; and

18                 (2) not more than 5 years may be spent in the transitional stage of  
19                 program participation.

### 20   **§ 23330. Collection of data on program operations**

21           The Administrator shall develop and implement a process for the system-  
22           atic collection of data on the operations of the program.

### 23   **§ 23331. Approval of contract options and modifications**

24           The Administrator shall make substantial and sustained efforts to achieve  
25           a maximum 10-day period as the average processing time for approving op-  
26           tions and modifications to contracts awarded under the program and sub-  
27           mitted to the Administrator for approval.

### 28   **§ 23332. Orderly and efficient management of program**

29           The Administrator shall, to the maximum extent practicable, minimize  
30           delay, eliminate excess regulation, and require only such paperwork as is  
31           necessary to effect the orderly and efficient management of the program  
32           and the award of contracts under the program.

### 33   **§ 23333. Participation in federally funded programs and** 34           **projects**

35           (a) IN GENERAL.—A small business concern that is certified, or otherwise  
36           meets the criteria for participation in any program under the program, shall  
37           not be required by any State or political subdivision of a State to meet addi-  
38           tional criteria or certification, unrelated to the capability to provide the re-  
39           quested product or service, to participate as a small business concern owned  
40           and controlled by socially and economically disadvantaged individuals in any

1 program or project that is funded, in whole or in part, by the Federal Gov-  
2 ernment.

3 (b) NOTICE OF PARTICIPATION BY THE SECRETARY OF TRANSPOR-  
4 TATION.—The Secretary of Transportation shall notify each State or polit-  
5 ical subdivision of a State to which the Secretary of Transportation awards  
6 a grant or other Federal funds of the criteria for participation by a small  
7 business concern owned and controlled by socially and economically dis-  
8 advantaged individuals in any program or project that is funded, in whole  
9 or in part, by the Federal Government.

10 **CHAPTER 235—TECHNICAL AND MANAGEMENT**  
11 **ASSISTANCE**

Sec.

23501. Financial assistance for projects providing technical or management assistance.

23502. Eligible projects.

23503. Location of service.

12 **§ 23501. Financial assistance for projects providing tech-**  
13 **nicol or management assistance**

14 (a) IN GENERAL.—The Administrator shall provide financial assistance to  
15 public or private organizations to pay all or part of the cost of projects de-  
16 signed to provide technical or management assistance to program partici-  
17 pants, with special attention to small business concerns located in areas  
18 with high proportions of unemployed or low-income individuals.

19 (b) FORM OF ASSISTANCE.—The financial assistance authorized for  
20 projects under this chapter includes assistance advanced by grant, agree-  
21 ment, or contract.

22 (c) PAYMENT.—The Administrator may make payments under a grant or  
23 contract under this chapter in lump sum or installments, and in advance  
24 or by way of reimbursement, and in the case of grants, with necessary ad-  
25 justments on account of overpayments or underpayments.

26 **§ 23502. Eligible projects**

27 (a) IN GENERAL.—Financial assistance under this chapter may be pro-  
28 vided for projects, including projects for—

29 (1) planning and research, including feasibility studies and market  
30 research;

31 (2) the identification and development of new business opportunities;

32 (3) the furnishing of centralized services with regard to public serv-  
33 ices and Federal Government programs including the programs author-  
34 ized under this division and section 20511 of this title;

35 (4) the establishment and strengthening of business service agencies,  
36 including trade associations and cooperatives; and

37 (5) the furnishing of business counseling, management training, and  
38 legal and other related services, with special emphasis on the develop-

1           ment of management training programs using the resources of the  
2           business community (including the development of management train-  
3           ing opportunities in existing business) and with emphasis in all cases  
4           on providing management training of sufficient scope and duration to  
5           develop entrepreneurial and managerial self-sufficiency on the part of  
6           the individuals served.

7           (b) PREFERENCE.—The Administrator shall give preference to projects  
8           that promote the ownership, participation in ownership, or management of  
9           small business concerns owned by program participants.

10       **§ 23503. Location of service**

11           To the extent feasible, service under this chapter shall be provided in a  
12           location that is easily accessible to the program participants served.

13                       **DIVISION F—PROCUREMENT ASSISTANCE**

14                               **CHAPTER 241—GENERAL PROVISIONS**

Sec.

- 24101. Definition of executive agency.
- 24102. Authority.
- 24103. Technical, managerial, and informational aids.
- 24104. Inventory of productive facilities.
- 24105. Utilization of productive capacity.
- 24106. Subcontracting to small business concerns.
- 24107. Size certification.
- 24108. Responsibility certification.
- 24109. Information pertaining to Federal procurement or production.
- 24110. Information pertaining to disposal of Federal property.
- 24111. Information pertaining to supplies of materials.
- 24112. Fair proportions of business for small business concerns.
- 24113. Fair and reasonable treatment of small business concerns.
- 24114. Information and assistance pertaining to federally aided urban renewal projects.
- 24115. Dissemination of information by the Administrator.
- 24116. Availability of information from Federal agencies.
- 24117. Adjustment of regulations and programs to the needs of small business concerns.
- 24118. Outreach programs for disabled veterans, veterans, and reservists.

15       **§ 24101. Definition of executive agency**

16           In this division, the term "executive agency" has the meaning given the  
17           term in section 4 of the Office of Federal Procurement Policy Act (41  
18           U.S.C. 403).

19       **§ 24102. Authority**

20           The Administrator shall take an action under this chapter when the Ad-  
21           ministrator determines that the action is necessary.

22       **§ 24103. Technical, managerial, and informational aids**

23           (a) IN GENERAL.—

24                       (1) ACTIVITIES.—The Administrator shall provide technical, manage-  
25                       rial, and informational aids to small business concerns—

26                               (A) by advising and counseling on matters in connection with  
27                       Government procurement and policies, principles, and practices of  
28                       good management;

29                               (B) by cooperating and advising with—



1 (i) voluntary business, professional, educational, and other  
2 nonprofit organizations, associations, and institutions; and

3 (ii) other Federal and State agencies;

4 (C) by maintaining a clearinghouse for information on man-  
5 aging, financing, and operating small business concerns; and

6 (D) by disseminating such information, including through rec-  
7 ognition events, and by other activities that the Administration de-  
8 termines to be appropriate.

9 (2) NO ENDORSEMENT; APPROPRIATE RECOGNITION.—In cooper-  
10 ating and advising with an entity under paragraph (1)(B)(i), the Ad-  
11 ministrator shall take such actions as the Administrator determines to  
12 be necessary to ensure that—

13 (A) the cooperation does not constitute or imply an endorsement  
14 by the Administrator of the entity or its products or services; and

15 (B) the Administration receives appropriate recognition in all  
16 printed material.

17 (3) FOR-PROFIT CONCERNS.—The Administrator may provide tech-  
18 nical, managerial, and informational aids to small business concerns  
19 through cooperation with a for-profit concern (referred to in this para-  
20 graph as a “cosponsor”) if the Administrator—

21 (A) takes such action as the Administrator determines to be ap-  
22 propriate to ensure that—

23 (i) the Administration receives appropriate recognition and  
24 publicity;

25 (ii) the cooperation does not constitute or imply an en-  
26 dorsement by the Administrator of any product or service of  
27 the cosponsor;

28 (iii) unnecessary promotion of the products or services of  
29 the cosponsor is avoided; and

30 (iv) the use of any one cosponsor in a marketing area is  
31 minimized; and

32 (B) develops an agreement, executed on behalf of the Adminis-  
33 trator by an employee of the Administration in Washington, the  
34 District of Columbia, that, at a minimum—

35 (i) specifies the terms and conditions of the cooperation;  
36 and

37 (ii) provides that—

38 (I) any printed material to announce the cosponsor-  
39 ship or to be distributed at the cosponsored activity shall  
40 be approved in advance by the Administrator;

1 (II) only minimal charges may be imposed on any  
2 small business concern to cover the direct costs of pro-  
3 viding the assistance;

4 (III) the Administrator may provide to the cosponsor  
5 mailing labels but not lists of names and addresses of  
6 small business concerns compiled by the Administrator;

7 (IV) all printed materials containing the names of  
8 both the Administration and the cosponsor shall include  
9 a prominent disclaimer that the cooperation does not  
10 constitute or imply an endorsement by the Administrator  
11 of any product or service of the cosponsor; and

12 (V) the Administration shall receive appropriate rec-  
13 ognition in all cosponsorship printed materials.

14 (b) VOLUNTEER PROGRAMS.—

15 (1) IN GENERAL.—In carrying out this section, the Administrator  
16 shall establish, conduct, and publicize, and recruit, select, and train vol-  
17 unteers for, and enter into contracts, grants, or cooperative agreements  
18 for, volunteer programs, including SCORE and an Active Corps of Ex-  
19 ecutives for the purposes of subsection (a).

20 (2) STAFF.—To facilitate the implementation of the volunteer pro-  
21 grams, the Administrator shall, to the extent and in such amounts as  
22 are provided in advance in appropriation Acts, maintain at Administra-  
23 tion headquarters, and pay the salaries, benefits, and expenses of, a  
24 volunteer and professional staff to manage and oversee the volunteer  
25 programs.

26 (3) CONTRIBUTIONS.—Notwithstanding any other provision of law,  
27 SCORE may—

28 (A) solicit cash and in-kind contributions from the private sec-  
29 tor to be used to carry out its functions under this subtitle; and

30 (B) use payments made by the Administrator under this sub-  
31 section for such solicitation and management of the contributions  
32 received.

33 (c) USE OF ADMINISTRATION FACILITIES.—The Administrator shall  
34 allow any individual or group of persons participating with the Adminis-  
35 trator in furtherance of this section to use such of the Administration's of-  
36 fice facilities and related material and services (including clerical and steno-  
37 graphic services) as the Administrator considers appropriate.

38 (d) VOLUNTEERS DEEMED TO BE FEDERAL EMPLOYEES FOR FEDERAL  
39 TORT CLAIMS PURPOSES.—A volunteer, while carrying out an activity  
40 under this section, shall be deemed to be a Federal employee for purposes  
41 of chapter 171 of title 28.

1 (e) VOLUNTEERS DEEMED TO BE CIVIL EMPLOYEES FOR WORK INJURY  
 2 COMPENSATION PURPOSES.—A volunteer, while carrying out an activity  
 3 under this section, shall, for purposes of subchapter I of chapter 81 of title  
 4 5 (relative to compensation to Federal employees for work injuries), be  
 5 deemed to be a civil employee of the United States within the meaning of  
 6 the term “employee” as defined in section 8101 of title 5, and that sub-  
 7 chapter shall apply except that in computing compensation benefits for dis-  
 8 ability or death, the monthly pay of a volunteer shall be deemed to be that  
 9 received under the entrance salary for a grade GS–11 employee.

10 (f) REIMBURSEMENT OF VOLUNTEERS.—

11 (1) IN GENERAL.—The Administrator may reimburse a volunteer  
 12 carrying out an activity under this section for—

13 (A) all necessary out-of-pocket expenses incident to the volun-  
 14 teer’s provision of services under this subtitle, or in connection  
 15 with attendance at a meeting sponsored by the Administration;

16 (B) the cost of malpractice insurance, as the Administrator  
 17 shall determine, in accordance with regulations that the Adminis-  
 18 trator shall prescribe; and

19 (C) travel expenses (including per diem in lieu of subsistence)  
 20 as authorized by section 5703 of title 5 for individuals serving  
 21 without pay, while the volunteer is carrying out such an activity  
 22 away from the volunteer’s home or regular place of business.

23 (2) TREATMENT OF PAYMENTS.—Notwithstanding any other provi-  
 24 sion of law, no payment for supportive services or reimbursement of  
 25 out-of-pocket expenses made to a volunteer serving under this section  
 26 shall be subject to any tax or charge or be treated as wages or com-  
 27 pensation for the purposes of unemployment, disability, retirement,  
 28 public assistance, or similar benefit payments, or minimum wage laws.

29 (g) LIMITATION ON PROVISION OF SERVICES TO PERSONS WITH A DE-  
 30 LINQUENT LOAN.—A volunteer carrying out an activity under this section  
 31 shall not provide any service to a person with a loan under this subtitle that  
 32 is delinquent except on a specific request for assistance signed by the person  
 33 in connection with the delinquency.

34 (h) GRANTS FOR BUSINESS COUNSELING AND ASSISTANCE.—

35 (1) IN GENERAL.—In carrying out this section, the Administrator  
 36 may make a grant to, or enter into a contract or cooperative agreement  
 37 with, a public or private institution of higher education for the estab-  
 38 lishment and operation of a small business institute, which shall be  
 39 used to provide business counseling and assistance to small business  
 40 concerns through the activities of students enrolled at the institution.

1           (2) EDUCATIONAL CREDITS.—A student engaged in an activity fund-  
2           ed under paragraph (1) shall be entitled to receive educational credit  
3           for the activity.

4           (i) PAYMENT OF EXPENSES IN JUDICIAL OR ADMINISTRATIVE PRO-  
5           CEEDINGS.—Notwithstanding any other provision of law and in accordance  
6           with regulations that the Administrator shall prescribe, in a judicial or ad-  
7           ministrative proceeding arising directly out of the performance of an activity  
8           under this section to which a volunteer is made a party, the Administrator  
9           may employ counsel and pay counsel fees, court costs, bail, and other ex-  
10          penses incidental to the defense of the volunteer.

11       **§ 24104. Inventory of productive facilities**

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

13           (1) make a complete inventory of all productive facilities of small  
14           business concerns; or

15           (2) arrange for such an inventory to be made by any other govern-  
16           mental agency that has the facilities.

17          (b) INFORMATION FROM STATE AGENCIES.—In making an inventory  
18          under subsection (a), the Administrator or other governmental agency may  
19          request an appropriate agency of a State to furnish an inventory of the pro-  
20          ductive facilities of small business concerns in the State if such an inventory  
21          is available or in prospect.

22       **§ 24105. Utilization of productive capacity**

23          The Administrator shall—

24           (1) coordinate and ascertain the means by which the productive ca-  
25           pacity of small business concerns can be most effectively utilized; and

26           (2) consult and cooperate with officers of the Government having  
27           procurement or property disposal powers, in order to utilize the poten-  
28           tial productive capacity of plants operated by small business concerns.

29       **§ 24106. Subcontracting to small business concerns**

30          The Administrator shall—

31           (1) obtain information concerning methods and practices that Gov-  
32           ernment prime contractors utilize in letting subcontracts; and

33           (2) take action to encourage the letting of subcontracts by prime  
34           contractors to small business concerns at prices and on terms and con-  
35           ditions that are fair and equitable.

36       **§ 24107. Size certification**

37          (a) IN GENERAL.—The Administrator shall determine within any indus-  
38          try the concerns that qualify as a small business concern for purposes of  
39          this subtitle.

40          (b) ISSUANCE OF CERTIFICATE.—When requested to do so, the Adminis-  
41          trator shall issue a certificate certifying a concern as a small business con-

cern in accordance with the criteria stated in this subtitle and section 10101 of this title.

(c) REVOCATION OF CERTIFICATE.—A certificate issued under subsection (b) shall be subject to revocation when the concern covered by the certificate ceases to qualify as a small business concern.

(d) CONCLUSIVE DETERMINATION.—An officer of the Government having procurement or lending power, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administrator's determination whether a concern qualifies as a small business concern.

### § 24108. Responsibility certification

(a) DEFINITIONS.—In this section:

(1) CONTRACTING OFFICER.—The term “contracting officer” means—

(A) a contracting officer; and

(B) any other officer engaged in the sale and disposal of Federal property.

(2) RESPONSIBILITY.—The term “responsibility” includes capability, competency, capacity, credit, integrity, perseverance, and tenacity.

(b) CERTIFICATION.—The Administrator shall certify to a contracting officer with respect to all elements of the responsibility of a small business concern or group of small business concerns to receive and perform a specific Government contract.

(c) NO PRECLUSION FROM AWARD OF CONTRACT WITHOUT REFERRAL TO THE ADMINISTRATOR.—A contracting officer may not, for any reason relating to an element of responsibility as determined under subsection (b), preclude a small business concern or group of small business concerns from being awarded a contract without referring the matter for a final disposition to the Administrator.

(d) CONCLUSIVE DETERMINATION.—A contracting officer shall—

(1) accept as conclusive a certification made under subsection (b) as to the specific Government contract with respect to which the certification is made; and

(2) let the contract to the small business concern or group of small business concerns without requiring the small business concern or group of small business concerns to meet any other requirement of responsibility or eligibility.

(e) NO EXEMPTION.—The Administrator may not establish an exemption from referral or notification or refuse to accept a referral or notification from a contracting officer made under subsection (c), but nothing in this

1 section requires the processing of an application for certification if the small  
2 business concern to which the referral pertains declines to have the applica-  
3 tion processed.

4 **§ 24109. Information pertaining to Federal procurement or**  
5 **production**

6 The Administrator shall obtain from any Federal agency engaged in pro-  
7 curement or in the financing of procurement or production such reports con-  
8 cerning the letting of contracts and subcontracts and the making of loans  
9 to business concerns as the Administrator considers pertinent in carrying  
10 out the functions of the Administrator under this subtitle and subtitle I.

11 **§ 24110. Information pertaining to disposal of Federal prop-**  
12 **erty**

13 The Administrator shall obtain from any Federal agency engaged in the  
14 disposal of Federal property such reports concerning the solicitation of bids,  
15 time of sale, or otherwise as the Administrator considers pertinent in car-  
16 rying out the functions of the Administrator under this subtitle and subtitle  
17 I.

18 **§ 24111. Information pertaining to supplies of materials**

19 The Administrator shall obtain from suppliers of materials information  
20 pertaining to the method of filling orders for materials, and the bases for  
21 allocating their supplies of materials, when it appears that a small business  
22 concern is unable to obtain material from its normal sources.

23 **§ 24112. Fair proportions of business for small business con-**  
24 **cerns**

25 The Administrator shall make studies and recommendations to the appro-  
26 priate Federal agencies to ensure that—

27 (1) a fair proportion of the total purchases and contracts for prop-  
28 erty and services for the Government is placed with small business con-  
29 cerns;

30 (2) a fair proportion of Government contracts for research and devel-  
31 opment is placed with small business concerns;

32 (3) a fair proportion of the total sales of Government property is  
33 made to small business concerns; and

34 (4) a fair and equitable share of materials, supplies, and equipment  
35 is available to small business concerns.

36 **§ 24113. Fair and reasonable treatment of small business**  
37 **concerns**

38 The Administrator shall consult and cooperate with all Federal agencies  
39 for the purpose of ensuring that small business concerns receive fair and  
40 reasonable treatment from Federal agencies.

1    **§ 24114. Information and assistance pertaining to federally**  
 2                   **aided urban renewal projects**

3           The Administrator shall provide at the earliest practicable time such in-  
 4    formation and assistance as are appropriate (including information con-  
 5    cerning eligibility for loans under section 21303 of this title) to local public  
 6    agencies (as defined in section 110(h) of the Housing Act of 1949 (42  
 7    U.S.C. 1460(h))) and to small business concerns to be displaced by federally  
 8    aided urban renewal projects in order to assist the small business concerns  
 9    in reestablishing operations.

10   **§ 24115. Dissemination of information by the Administrator**

11           (a) IN GENERAL.—The Administrator shall disseminate, without regard  
 12    to section 3204 of title 39, information, in such form as the Administrator  
 13    considers appropriate, to public agencies, private organizations, and the gen-  
 14    eral public.

15           (b) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Ad-  
 16    ministrator shall, for each fiscal year—

17               (1) collect information concerning the procurement practices and  
 18               procedures of each Federal agency having procurement authority;

19               (2) publish and disseminate the information to contracting officers  
 20               in all Federal agencies; and

21               (3) make the information available to any small business concern  
 22               that requests the information.

23   **§ 24116. Availability of information from Federal agencies**

24           (a) REQUESTS FOR INFORMATION.—For any contract to be let by any  
 25    Federal agency, the Federal agency shall provide to any small business con-  
 26    cern, on request by the small business concern—

27               (1) a copy of bid sets and specifications with respect to the contract;

28               (2) the name and telephone number of an employee of the Federal  
 29               agency to answer questions with respect to the contract; and

30               (3) adequate citations to each major Federal law (including a regula-  
 31               tion) with which the small business concern must comply in performing  
 32               the contract.

33           (b) EXEMPT CONTRACTS.—Subsection (a) does not apply to a contract  
 34    (or subcontract) that—

35               (1) will be performed entirely outside the United States; or

36               (2) is for services that are personal in nature.

37   **§ 24117. Adjustment of regulations and programs to the**  
 38                   **needs of small business concerns**

39           The Administrator shall—

1 (1) make studies of matters materially affecting the competitive  
2 strength of small business concerns and of the effect on small business  
3 concerns of Federal laws (including regulations) and programs; and

4 (2) make recommendations to Federal agencies as appropriate for  
5 the adjustment of regulations and programs to the needs of small busi-  
6 ness concerns.

7 **§ 24118. Outreach programs for disabled veterans, veterans,**  
8 **and reservists**

9 (a) IN GENERAL.—The Administrator shall make grants to, and enter  
10 into contracts and cooperative agreements with, educational institutions, pri-  
11 vate businesses, veterans' nonprofit community-based organizations, and  
12 Federal agencies and State and local agencies for the establishment and im-  
13 plementation of outreach programs for disabled veterans, veterans, and re-  
14 servists.

15 (b) INCREASE IN NUMBER OF VETERANS BUSINESS OUTREACH CEN-  
16 TERS.—The Administrator shall use the authority under subsection (a) to  
17 ensure that the number of veterans business outreach centers throughout  
18 the United States increases by the number that the Administrator considers  
19 appropriate, based on need, for each fiscal year.

20 **CHAPTER 243—SUBCONTRACTING PROVISIONS**

Sec.

24301. Opportunity to participate in performance of contracts.

24302. Notice of provisions relating to contracts awarded pursuant to the negotiated method  
of procurement.

24303. Subcontracting plans.

24304. Incentives.

24305. Liquidated damages.

24306. Material breach.

24307. Effect of chapter.

21 **§ 24301. Opportunity to participate in performance of con-**  
22 **tracts**

23 (a) IN GENERAL.—The clause stated in subsection (c) shall be included  
24 in all contracts let by a Federal agency except a contract described in sub-  
25 section (b).

26 (b) EXCEPTED CONTRACTS.—The clause stated in subsection (c) need not  
27 be included in—

28 (1) a contract that does not exceed the simplified acquisition thresh-  
29 old;

30 (2) a contract (including all subcontracts under the contract) that  
31 will be performed entirely outside the United States; or

32 (3) a contract for a service that is personal in nature.

33 (c) REQUIRED CLAUSE.—The clause required by subsection (a) is as fol-  
34 lows:

35 “(1) DEFINITIONS.—



1           “(A) IN GENERAL.—As used in this contract, each of the terms  
2           ‘qualified HUBZone small business concern’, ‘small business con-  
3           cern’, ‘small business concern owned and controlled by service-dis-  
4           abled veterans’, ‘small business concern owned and controlled by  
5           socially and economically disadvantaged individuals’, ‘small busi-  
6           ness concern owned and controlled by veterans’, and ‘small busi-  
7           ness concern owned and controlled by women’ has the meaning  
8           given the term in section 10101 of title 53, United States Code.

9           “(B) PRESUMPTION.—For purposes of applying the definition  
10           of ‘small business concern owned and controlled by socially and  
11           economically disadvantaged individuals’, the contractor shall pre-  
12           sume that socially and economically disadvantaged individuals in-  
13           clude Black Americans, Hispanic Americans, Native Americans,  
14           Asian Pacific Americans, and other minorities, or any other indi-  
15           vidual found to be disadvantaged by the United States Small Busi-  
16           ness Administration.

17           “(2) POLICY.—It is the policy of the United States that qualified  
18           HUBZone small business concerns, small business concerns owned and  
19           controlled by service-disabled veterans, small business concerns owned  
20           and controlled by socially and economically disadvantaged individuals,  
21           small business concerns owned and controlled by veterans, small busi-  
22           ness concerns owned and controlled by women, and other small busi-  
23           ness concerns shall have the maximum practicable opportunity to par-  
24           ticipate in the performance of contracts let by any Federal agency, in-  
25           cluding contracts and subcontracts for subsystems, assemblies, compo-  
26           nents, and related services for major systems. It is further the policy  
27           of the United States that its prime contractors establish procedures to  
28           ensure the timely payment of amounts due pursuant to the terms of  
29           their subcontracts with qualified HUBZone small business concerns,  
30           small business concerns owned and controlled by service-disabled vet-  
31           erans, small business concerns owned and controlled by socially and  
32           economically disadvantaged individuals, small business concerns owned  
33           and controlled by veterans, small business concerns owned and con-  
34           trolled by women, and other small business concerns.

35           “(3) AGREEMENT.—The contractor agrees—

36           “(A) to carry out the policy stated in paragraph (2) in the  
37           awarding of subcontracts to the fullest extent consistent with the  
38           efficient performance of this contract; and

39           “(B) to cooperate in any studies or surveys that may be con-  
40           ducted by the United States Small Business Administration or the

1           awarding agency of the United States as necessary to determine  
2           the extent of the contractor's compliance with this clause.

3           “(4) RELIANCE ON WRITTEN REPRESENTATION.—The contractor,  
4           acting in good faith, may rely on a written representation by a subcon-  
5           tractor regarding its status as a qualified HUBZone small business  
6           concern, small business concern owned and controlled by service-dis-  
7           abled veterans, small business concern owned and controlled by socially  
8           and economically disadvantaged individuals, small business concern  
9           owned and controlled by veterans, small business concern owned and  
10          controlled by women, or other small business concern.”

11       **§ 24302. Notice of provisions relating to contracts awarded**  
12                               **pursuant to the negotiated method of procurement**

13          (a) REQUIRED CLAUSE.—A solicitation of an offer for a contract de-  
14          scribed in subsection (b) shall contain a clause notifying potential offering  
15          companies of the provisions of this chapter relating to contracts awarded  
16          pursuant to the negotiated method of procurement.

17          (b) CONTRACTS.—A contract referred to in subsection (a) is a contract  
18          let by a Federal agency that—

19               (1) is to be awarded pursuant to the negotiated method of procure-  
20               ment; and

21               (2) may exceed—

22                       (A) \$1,000,000, in the case of a contract for the construction  
23                       of a public facility; or

24                       (B) \$500,000, in the case of any other contract.

25       **§ 24303. Subcontracting plans**

26          (a) DEFINITIONS.—In this section:

27               (1) BIDDER.—The term “bidder” does not include a bidder that is  
28               a small business concern.

29               (2) OFFEROR.—The term “offeror” does not include an offeror that  
30               is a small business concern.

31          (b) NEGOTIATED PROCUREMENTS.—

32               (1) NEGOTIATION.—Before the award of any contract described in  
33               paragraph (2), or any amendment or modification to such a contract,  
34               the apparent successful offeror shall negotiate with the procurement  
35               authority a subcontracting plan that incorporates the information pre-  
36               scribed in subsection (d).

37               (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-  
38               tract let by a Federal agency that—

39                       (A) is to be (or was) awarded pursuant to the negotiated meth-  
40                       od of procurement;

1 (B) is required to include the clause stated in section 24301 of  
2 this title;

3 (C) may exceed—

4 (i) \$1,000,000, in the case of a contract for the construc-  
5 tion of a public facility; or

6 (ii) \$500,000, in the case of any other contract; and

7 (D) offers a subcontracting possibility.

8 (3) INCLUSION IN CONTRACT.—The subcontracting plan shall be in-  
9 cluded in and made a material part of the contract.

10 (4) FAILURE TO NEGOTIATE SUBCONTRACTING PLAN.—If, within the  
11 time prescribed in regulations of the procuring agency, the apparent  
12 successful offeror fails to negotiate the subcontracting plan required by  
13 paragraph (2), the offeror shall be ineligible to be awarded the con-  
14 tract.

15 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBI-  
16 LITY.—Prior compliance of the offeror with other subcontracting  
17 plans under this subsection shall be considered by a procuring agency  
18 in determining the responsibility of the offeror for the award of the  
19 contract.

20 (6) MAXIMUM OPPORTUNITY.—No contract shall be awarded to any  
21 offeror unless the procuring agency determines that the subcontracting  
22 plan to be negotiated by the offeror under paragraph (2) provides the  
23 maximum practicable opportunity for qualified HUBZone small busi-  
24 ness concerns, small business concerns owned and controlled by service-  
25 disabled veterans, small business concerns owned and controlled by so-  
26 cially and economically disadvantaged individuals, small business con-  
27 cerns owned and controlled by veterans, small business concerns owned  
28 and controlled by women, and other small business concerns, to partici-  
29 pate in the performance of the contract.

30 (c) ADVERTISED PROCUREMENTS.—

31 (1) REQUIRED CLAUSE.—A solicitation of a bid for a contract de-  
32 scribed in paragraph (2), or any amendment or modification to such  
33 a contract, shall contain a clause requiring any bidder that is selected  
34 to be awarded a contract to submit to the procuring agency a subcon-  
35 tracting plan that incorporates the information prescribed in subsection  
36 (d).

37 (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-  
38 tract let by a Federal agency that—

39 (A) is to be awarded pursuant to the formal advertising method  
40 of procurement;

1 (B) is required to contain the clause stated in section 24301 of  
2 this title;

3 (C) may exceed—

4 (i) \$1,000,000, in the case of a contract for the construc-  
5 tion of a public facility; or

6 (ii) \$500,000, in the case of any other contract; and

7 (D) offers a subcontracting possibility.

8 (3) INCLUSION IN CONTRACT.—The subcontracting plan of the bid-  
9 der awarded the contract shall be included in and made a material part  
10 of the contract.

11 (4) FAILURE TO SUBMIT SUBCONTRACTING PLAN.—If, within the  
12 time prescribed in regulations of the procuring agency, the bidder se-  
13 lected to be awarded the contract fails to submit the subcontracting  
14 plan required by paragraph (1), the bidder shall become ineligible to  
15 be awarded the contract.

16 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBI-  
17 LITY.—Prior compliance of the bidder with other subcontracting  
18 plans under this subsection shall be considered by the procuring agency  
19 in determining the responsibility of the bidder for the award of the con-  
20 tract.

21 (d) CONTENTS OF SUBCONTRACTING PLAN.—A subcontracting plan shall  
22 include—

23 (1) percentage goals for the utilization as subcontractors of qualified  
24 HUBZone small business concerns, small business concerns owned and  
25 controlled by service-disabled veterans, small business concerns owned  
26 and controlled by socially and economically disadvantaged individuals,  
27 small business concerns owned and controlled by veterans, small busi-  
28 ness concerns owned and controlled by women, and other small busi-  
29 ness concerns;

30 (2) the name of an individual within the employ of the offeror or  
31 bidder who will administer the subcontracting program of the offeror  
32 or bidder and a description of the duties of that individual;

33 (3) a description of the efforts that the offeror or bidder will take  
34 to ensure that qualified HUBZone small business concerns, small busi-  
35 ness concerns owned and controlled by service-disabled veterans, small  
36 business concerns owned and controlled by socially and economically  
37 disadvantaged individuals, small business concerns owned and con-  
38 trolled by veterans, small business concerns owned and controlled by  
39 women, and other small business concerns will have an equitable oppor-  
40 tunity to compete for subcontracts;

41 (4) assurances that the offeror or bidder will—

1 (A) include the clause required by section 24301 of this title in  
 2 all subcontracts that offer further subcontracting opportunities;  
 3 and

4 (B) require all subcontractors (except small business concerns)  
 5 that receive subcontracts in excess of \$1,000,000 in the case of  
 6 a contract for the construction of a public facility, or in excess of  
 7 \$500,000 in the case of any other contract, to adopt a subcon-  
 8 tracting plan similar to the subcontracting plan required under  
 9 subsection (b) or (c);

10 (5) assurances that the offeror or bidder will submit such periodic  
 11 reports and cooperate in any studies or surveys as may be required by  
 12 the procuring agency or the Administrator to determine the extent of  
 13 compliance by the offeror or bidder with the subcontracting plan; and

14 (6) a recitation of—

15 (A) the types of records that the successful offeror or bidder will  
 16 maintain to demonstrate procedures that are adopted to comply  
 17 with the requirements and goals set forth in the subcontracting  
 18 plan, including the establishment of source lists of qualified  
 19 HUBZone small business concerns, small business concerns owned  
 20 and controlled by service-disabled veterans, small business con-  
 21 cerns owned and controlled by socially and economically disadvan-  
 22 taged individuals, small business concerns owned and controlled by  
 23 veterans, small business concerns owned and controlled by women,  
 24 and other small business concerns; and

25 (B) efforts to identify and award subcontracts to small business  
 26 concerns.

27 (e) ATTAINMENT OF GOALS.—

28 (1) ATTAINABILITY OF GOALS.—A Federal agency shall ensure that  
 29 the goals offered by an apparent successful bidder or offeror are attain-  
 30 able in relation to—

31 (A) the subcontracting opportunities available to the contractor,  
 32 commensurate with the efficient and economical performance of  
 33 the contract;

34 (B) the pool of eligible subcontractors available to fulfill the  
 35 subcontracting opportunities; and

36 (C) the actual performance of the contractor in fulfilling the  
 37 subcontracting goals specified in prior subcontracting plans.

38 (2) CREDIT FOR DEVELOPMENT ASSISTANCE.—For purposes of de-  
 39 termining the attainment of a subcontract utilization goal under a sub-  
 40 contracting plan entered into with an executive agency under sub-  
 41 section (b) or (c), a mentor firm that provides development assistance

1 to a protégé firm under the pilot Mentor-Protégé Program established  
2 pursuant to section 831 of the National Defense Authorization Act for  
3 Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) shall  
4 be granted credit for the assistance in accordance with subsection (g)  
5 of that section.

6 (f) BUNDLED CONTRACTS.—The following factors shall be designated by  
7 a Federal agency as significant factors for purposes of evaluating offers for  
8 a bundled contract if the head of the Federal agency determines that the  
9 contract offers a significant opportunity for subcontracting:

10 (1) A factor that is based on the rate provided under the subcon-  
11 tracting plan for small business participation in the performance of the  
12 contract.

13 (2) For the evaluation of past performance of an offeror, a factor  
14 that is based on the extent to which the offeror attained applicable  
15 goals for small business participation in the performance of contracts.

16 (g) COMPLIANCE ASSISTANCE.—The Administrator may—

17 (1) assist Federal agencies and businesses in complying with their  
18 responsibilities under this section, including the formulation of subcon-  
19 tracting plans;

20 (2)(A) review any solicitation for any contract to be let under sub-  
21 section (b) or (c) to determine the maximum practicable opportunity  
22 for qualified HUBZone small business concerns, small business con-  
23 cerns owned and controlled by service-disabled veterans, small business  
24 concerns owned and controlled by socially and economically disadvan-  
25 taged individuals, small business concerns, small business concerns  
26 owned and controlled by veterans, small business concerns owned and  
27 controlled by women, and other small business concerns to participate  
28 as subcontractors in the performance of any contract resulting from  
29 any solicitation; and

30 (B) submit findings, which shall be advisory in nature, to the pro-  
31 curing agency; and

32 (3) evaluate compliance with subcontracting plans—

33 (A) on a contract-by-contract basis; or

34 (B) in the case of a contractor having multiple contracts, on an  
35 aggregate basis.

#### 36 § 24304. Incentives

37 Notwithstanding any other provision of law, a Federal agency, to encour-  
38 age subcontracting opportunities for qualified HUBZone small business con-  
39 cerns, small business concerns owned and controlled by service-disabled vet-  
40 erans, small business concerns owned and controlled by socially and eco-  
41 nomically disadvantaged individuals, small business concerns owned and

1 controlled by veterans, small business concerns owned and controlled by  
 2 women, and other small business concerns, may provide such incentives as  
 3 the Federal agency considers appropriate to encourage such subcontracting  
 4 opportunities as are commensurate with the efficient and economical per-  
 5 formance of a contract that is let pursuant to the negotiated method of pro-  
 6 curement.

7 **§ 24305. Liquidated damages**

8 (a) REQUIRED CLAUSE.—

9 (1) IN GENERAL.—A contract subject to subsection (b) or (c) of sec-  
 10 tion 24303 of this title shall contain a clause for the payment of liq-  
 11 uidated damages on a finding that a prime contractor has failed to  
 12 make a good faith effort to comply with the requirements imposed on  
 13 the contractor by this chapter.

14 (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The clause  
 15 required by paragraph (1) shall be made part of the Federal Acquisi-  
 16 tion Regulation and promulgated pursuant to section 22 of the Office  
 17 of Federal Procurement Policy Act (41 U.S.C. 418b).

18 (b) DEMONSTRATION OF GOOD FAITH EFFORT.—A contractor shall be  
 19 afforded an opportunity to demonstrate a good faith effort regarding com-  
 20 pliance prior to the contracting officer's final decision regarding the imposi-  
 21 tion of damages and the amount of damages under subsection (a).

22 (c) DISPUTE RESOLUTION.—The final decision of a contracting officer re-  
 23 garding the contractor's obligation to pay damages under subsection (a) or  
 24 the amount of damages shall be subject to the Contract Disputes Act of  
 25 1978 (41 U.S.C. 601 et seq.).

26 **§ 24306. Material breach**

27 The failure of a contractor or subcontractor to comply in good faith  
 28 with—

29 (1) the clause required under section 24301 of this title; or

30 (2) a subcontracting plan required of the contractor pursuant under  
 31 section 24303 of this title to be included in its contract or subcontract;  
 32 shall be a material breach of the contract or subcontract.

33 **§ 24307. Effect of chapter**

34 Nothing in this chapter supersedes the requirements of part 331 of title  
 35 44, Code of Federal Regulations (or any successor regulation).

36 **CHAPTER 245—NOTICE PROVISIONS**

Sec.

24501. Notice provisions.

24502. Availability of complete solicitation package.

24503. Limited applicability to Tennessee Valley Authority.

37 **§ 24501. Notice provisions**

38 (a) IN GENERAL.—Except as provided in subsection (e)—

1 (1) an executive agency intending to—

2 (A) solicit bids or proposals for a contract for property or serv-  
3 ices for a price expected to exceed \$25,000; or

4 (B) place an order, expected to exceed \$25,000, under a basic  
5 agreement, basic ordering agreement, or similar arrangement;  
6 shall publish a notice described in subsection (d);

7 (2) an executive agency intending to solicit bids or proposals for a  
8 contract for property or services shall post, for a period of not less than  
9 10 days, in a public place at the contracting office issuing the solici-  
10 tation, a notice of solicitation described in subsection (d)—

11 (A) in the case of an executive agency other than the Depart-  
12 ment of Defense, if the contract is for a price expected to exceed  
13 \$10,000, but not to exceed \$25,000; and

14 (B) in the case of the Department of Defense, if the contract  
15 is for a price expected to exceed \$5,000, but not to exceed  
16 \$25,000; and

17 (3) an executive agency awarding a contract for property or services  
18 for a price exceeding \$100,000, or placing an order described in para-  
19 graph (1)(B) exceeding \$100,000, shall furnish for publication by the  
20 Secretary of Commerce a notice announcing the award or order if there  
21 is likely to be a subcontract under the contract or order.

22 (b) MEANS OF PUBLICATION.—

23 (1) NOTICES OF SOLICITATION.—A notice of solicitation required to  
24 be published under subsection (a) may be published by electronic  
25 means that meet the accessibility requirements under section 18(a)(7)  
26 of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)).

27 (2) NOTICES OF SUBCONTRACTING OPPORTUNITY.—

28 (A) IN GENERAL.—A notice of subcontracting opportunity may  
29 be submitted for publication by—

30 (i) a business concern awarded a contract by an executive  
31 agency subject to subsection (a)(3); and

32 (ii) a business concern that is a subcontractor or supplier  
33 (at any tier) to such a business concern having a subcon-  
34 tracting opportunity in excess of \$10,000.

35 (B) CONTENTS.—A notice of a subcontracting opportunity shall  
36 include—

37 (i) a description of the business opportunity that is com-  
38 parable to the description specified in subparagraphs (A),  
39 (B), (C), and (D) of subsection (d)(1); and

40 (ii) the due date for receipt of offers.



1 (C) UNIFORM IMPLEMENTATION.—The Federal Acquisition  
2 Regulation shall provide for uniform implementation of this para-  
3 graph.

4 (e) LIMITATIONS.—When an executive agency is required by subsection  
5 (a)(1) to publish a notice of solicitation, the executive agency shall not—

6 (1) issue the solicitation earlier than 15 days after the date on which  
7 the notice is published; or

8 (2) in the case of a contract or order estimated to be greater than  
9 the simplified acquisition threshold, establish a deadline for the submis-  
10 sion of all bids or proposals in response to the notice required by sub-  
11 section (a)(1) that—

12 (A) in the case of an order under a basic agreement, basic or-  
13 dering agreement, or similar arrangement, is earlier than the date  
14 that is 30 days after the date on which the notice required by sub-  
15 section (a)(1)(B) is published;

16 (B) in the case of a solicitation for research and development,  
17 is earlier than the date that is 45 days after the date on which  
18 the notice required by subsection (a)(1)(A) is published; or

19 (C) in any other case, is earlier than the date that is 30 days  
20 after the date on which the solicitation is issued.

21 (d) CONTENTS OF NOTICE.—

22 (1) IN GENERAL.—A notice of solicitation required by paragraph (1)  
23 or (2) of subsection (a) shall include—

24 (A) an accurate description of the property or services to be  
25 contracted for;

26 (B) provisions that—

27 (i)(I) state whether the technical data required to respond  
28 to the solicitation will not be furnished as part of the solicita-  
29 tion; and

30 (ii)(I) identify the source in the Government, if any, from  
31 which the technical data may be obtained; and

32 (ii)(II) state whether an offeror, its product, or service must  
33 meet a qualification requirement in order to be eligible for  
34 award; and

35 (ii)(III) if so, identify the office from which a qualification re-  
36 quirement may be obtained;

37 (C) the name, business address, and telephone number of the  
38 contracting officer;

39 (D) a statement that all responsible sources may submit a bid,  
40 proposal, or quotation (as appropriate) that shall be considered by  
41 the agency;

1 (E) in the case of a procurement using procedures other than  
 2 competitive procedures, a statement of the reason justifying the  
 3 use of such procedures and the identity of the intended source;  
 4 and

5 (F) in the case of a contract in an amount estimated to be  
 6 greater than \$25,000 but not greater than the simplified acquisi-  
 7 tion threshold—

8 (i) a description of the procedures to be used in awarding  
 9 the contract; and

10 (ii) a statement specifying the periods for prospective  
 11 offerors and the contracting officer to take the necessary  
 12 preaward and award actions.

13 (2) PROPERTY OR SERVICE DESCRIPTION.—A property or service de-  
 14 scription under paragraph (1)(A)—

15 (A) shall not be unnecessarily restrictive of competition; and

16 (B) shall include, as appropriate, the agency nomenclature, Na-  
 17 tional Stock Number or other part number, and a brief description  
 18 of the item's form, fit, or function, physical dimensions, predomi-  
 19 nant material of manufacture, or similar information that will as-  
 20 sist a prospective contractor in making an informed business judg-  
 21 ment concerning whether the prospective contractor should request  
 22 a copy of the solicitation.

23 (e) EXEMPTED ACTIVITIES.—A notice is not required under subsection  
 24 (a)(1) if—

25 (1) the proposed procurement—

26 (A) is for an amount not greater than the simplified acquisition  
 27 threshold; and

28 (B) is to be conducted by—

29 (i) using widespread electronic public notice of the solicita-  
 30 tion in a form that allows convenient and universal user ac-  
 31 cess through a single, Governmentwide point of entry; and

32 (ii) permitting the public to respond to the solicitation elec-  
 33 tronically;

34 (2)(A) the notice would disclose the executive agency's needs; and

35 (B) the disclosure of those needs would compromise the national se-  
 36 curity;

37 (3)(A) the proposed procurement would result from acceptance of an  
 38 unsolicited proposal that demonstrates a unique and innovative re-  
 39 search concept; and

40 (B) the publication of a notice of the unsolicited research proposal  
 41 would disclose the originality of thought or innovativeness of the pro-

1            proposal or would disclose proprietary information associated with the pro-  
2            posal;

3            (4) the proposed procurement would result from acceptance of a pro-  
4            posal submitted under chapter 263;

5            (5) the procurement is made against an order placed under a re-  
6            quirements contract;

7            (6) the procurement is made for perishable subsistence supplies;

8            (7)(A) the procurement is for a utility service other than a tele-  
9            communication service; and

10          (B) only one source is available; or

11          (8) the procurement is for the service of an expert for use in any  
12          litigation or dispute (including preparation for any foreseeable litigation  
13          or dispute) that involves or could involve the Federal Government in  
14          any trial, hearing, or proceeding before any court, administrative tri-  
15          bunal, or agency, or in any part of an alternative dispute resolution  
16          process, whether or not the expert is expected to testify.

17          **§ 24502. Availability of complete solicitation package**

18          (a) IN GENERAL.—An executive agency shall make available to any busi-  
19          ness concern, or the authorized representative of a business concern, the  
20          complete solicitation package for any ongoing procurement announced in a  
21          notice under section 24501 of this title.

22          (b) FEE.—An executive agency may require the payment of a fee, not ex-  
23          ceeding the actual cost of duplication, for a copy of a solicitation package  
24          under subsection (a).

25          **§ 24503. Limited applicability to Tennessee Valley Authority**

26          This chapter applies to the Tennessee Valley Authority only with respect  
27          to procurements to be paid from appropriated funds.

28          **CHAPTER 247—NONCOMPETITIVE PROCEDURES**

Sec.

24701. Limitation on use of noncompetitive procedures.

24702. Limited applicability to Tennessee Valley Authority.

29          **§ 24701. Limitation on use of noncompetitive procedures**

30          (a) IN GENERAL.—An executive agency may not award a contract using  
31          procedures other than competitive procedures unless—

32                  (1) except as provided in subsection (c), a written justification for  
33                  the use of noncompetitive procedures has been approved—

34                          (A) in the case of a contract for an amount exceeding \$100,000  
35                          (but equal to or less than \$1,000,000), by the advocate for com-  
36                          petition for the procurement activity;

37                          (B) in the case of a contract for an amount exceeding  
38                          \$1,000,000 (but equal to or less than \$10,000,000), by the head  
39                          of the procurement activity or a delegate who—

1 (i) if a member of the Armed Forces, is a general or flag  
2 officer; or

3 (ii) if a civilian, is serving in a position classified above  
4 GS-15 pursuant to section 5108 of title 5; or

5 (C) in the case of a contract for an amount exceeding  
6 \$10,000,000, by the senior procurement executive of the agency  
7 designated pursuant to section 16(e) of the Office of Federal Pro-  
8 curement Policy Act (41 U.S.C. 414(e)); and

9 (2) all other requirements applicable to the use of noncompetitive  
10 procedures under title III of the Federal Property and Administrative  
11 Services Act of 1949 (41 U.S.C. 251 et seq.) or chapter 137 of title  
12 10, as appropriate, have been satisfied.

13 (b) NONDELEGABILITY.—The authority of an advocate for competition to  
14 approve the use of noncompetitive procedures under subsection (a)(1)(A)  
15 and the authority of a senior procurement executive to approve the use of  
16 noncompetitive procedures under subsection (a)(1)(C) may not be delegated.

17 (c) EXCEPTIONS.—The same exceptions as are provided in section  
18 303(f)(2) of the Federal Property and Administrative Services Act of 1949  
19 (41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10 shall apply with re-  
20 spect to the requirements of subsection (a)(1) of this section in the same  
21 manner as those exceptions apply to the requirements of section 303(f)(1)  
22 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.  
23 253(f)(1)) or section 2304(f)(1) of title 10, as appropriate.

24 **§ 24702. Limited applicability to Tennessee Valley Authority**

25 This chapter applies to the Tennessee Valley Authority only with respect  
26 to procurements to be paid from appropriated funds.

27 **CHAPTER 249—SMALL BUSINESS COMPETITIVENESS**  
28 **DEMONSTRATION PROGRAM**

Sec.

- 24901. Definitions.
- 24902. Establishment of program.
- 24903. Enhanced small business participation goals.
- 24904. Procurement procedures.
- 24905. Reporting and collection of data.
- 24906. Test plan and policy direction.

29 **§ 24901. Definitions**

30 In this chapter:

31 (1) DESIGNATED INDUSTRY GROUP.—

32 (A) IN GENERAL.—The term “designated industry group”  
33 means—

34 (i) construction (excluding dredging);

35 (ii) refuse systems and related services;

36 (iii) architectural and engineering services (including sur-  
37 veying and mapping);

- 1 (iv) non-nuclear ship repair; and  
 2 (v) landscaping and pest control services.

3 (B) CONSTRUCTION.—In subparagraph (A)(i), the term “con-  
 4 struction” includes a contract award that is assigned a North  
 5 American Industry Classification System code in—

- 6 (i) Subsector 236 (Construction of Buildings);  
 7 (ii) Subsector 237 (Heavy and Civil Engineering Construc-  
 8 tion) (excluding dredging); or  
 9 (iii) Subsector 238 (Specialty Trade Contractors).

10 (C) REFUSE AND RELATED SERVICES.—In subparagraph  
 11 (A)(ii), the term “refuse systems and related services” includes a  
 12 contract award that is assigned—

- 13 (i) a North American Industry Classification System code  
 14 in Subsector 562 (Waste Management and Remediation Serv-  
 15 ices) except code 56291;  
 16 (ii) North American Industry Classification System code  
 17 48411 (index item “local general freight trucking without  
 18 storage” only);  
 19 (iii) North American Industry Classification System code  
 20 48421 (index item “household goods moving without storage”  
 21 only); or  
 22 (iv) North American Industry Classification System code  
 23 48422 (index item “local specialized freight without storage”  
 24 only).

25 (D) ARCHITECTURAL AND ENGINEERING SERVICES.—In sub-  
 26 paragraph (A)(iii), the term “architectural and engineering serv-  
 27 ices (including surveying and mapping)” includes a contract award  
 28 that—

- 29 (i) is assigned North American Industry Classification Sys-  
 30 tem code 54131, 54133 (except index item “traffic engineer-  
 31 ing”), 54136 (index item “geophysical surveying services”  
 32 only), or 54137; and  
 33 (ii) is awarded under the qualification-based selection pro-  
 34 cedures required by sections 1101 to 1104 of title 40.

35 (E) LANDSCAPING AND PEST CONTROL SERVICES.—In subpara-  
 36 graph (A)(v), the term “landscaping and pest control services” in-  
 37 cludes a contract award that is assigned North American Industry  
 38 Classification System code 561710 (relating to extermination and  
 39 pest control services) or 561730 (relating to landscaping services).

40 (2) EMERGING SMALL BUSINESS CONCERN.—The term “emerging  
 41 small business concern” means a small business concern whose size is

1 not greater than 50 percent of the numerical size standard applicable  
2 to the North American Industry Classification System code assigned to  
3 a contracting opportunity.

4 (3) ENHANCED SMALL BUSINESS PARTICIPATION GOAL.—The term  
5 “enhanced small business participation goal”, with respect to a partici-  
6 pating agency, means an enhanced small business participation goal es-  
7 tablished for the participating agency under section 24903 of this title.

8 (4) FULL AND OPEN COMPETITION.—The term “full and open com-  
9 petition” has the meaning given the term in section 4 of the Office of  
10 Federal Procurement Policy Act (41 U.S.C. 403).

11 (5) PARTICIPATING AGENCY.—

12 (A) IN GENERAL.—The term “participating agency” means an  
13 executive agency (as defined in section (4) of the Office of Federal  
14 Procurement Policy Act (41 U.S.C. 403)) that the Administrator  
15 for Federal Procurement Policy designates to participate in the  
16 program.

17 (B) EXECUTIVE AGENCIES REQUIRED TO BE DESIGNATED.—  
18 Under subparagraph (A), the Administrator for Federal Procure-  
19 ment Policy shall designate to participate in the program—

- 20 (i) the Department of Agriculture;  
21 (ii) the Department of Defense (with the Department of  
22 the Army, the Department of the Navy, the Department of  
23 the Air Force, and the defense agencies reporting separately);  
24 (iii) the Department of Energy;  
25 (iv) the Department of Health and Human Services;  
26 (v) the Department of the Interior;  
27 (vi) the Department of Transportation;  
28 (vii) the Environmental Protection Agency;  
29 (viii) the General Services Administration (with the Public  
30 Building Service reporting separately);  
31 (ix) the National Aeronautics and Space Administration;  
32 and  
33 (x) the Department of Veterans Affairs.

34 (C) REPORTING.—The Administrator for Federal Procurement  
35 Policy may require any participating agencies to report separately  
36 in any manner that the Administrator for Federal Procurement  
37 Policy considers appropriate to enhance the attainment of the test  
38 activities authorized by this chapter.

39 (6) PROGRAM.—The term “program” means the small business com-  
40 petitiveness demonstration program.

1 (7) SMALL BUSINESS PARTICIPATION.—The term “small business  
2 participation” includes the aggregate dollar value of every procurement  
3 contract award made to a small business concern, without regard to  
4 whether an award was based on restricted or unrestricted competition  
5 or was made on a sole source basis.

6 **§ 24902. Establishment of program**

7 (a) IN GENERAL.—There is established a small business competitiveness  
8 demonstration program under section 15 of the Office of Federal Procure-  
9 ment Policy Act (41 U.S.C. 413) to provide for the testing of innovative  
10 procurement methods and procedures.

11 (b) EXECUTIVE AGENT.—The Administrator of Federal Procurement Pol-  
12 icy shall designate the Administrator as the executive agent responsible for  
13 conducting the testing.

14 (c) PURPOSE.—The purpose of the program is to demonstrate whether—

15 (1) the competitive capabilities of small business concerns in certain  
16 industry groups will enable the small business concerns to compete suc-  
17 cessfully on an unrestricted basis for Federal contracting opportunities;

18 (2) the use of targeted goaling and management techniques by pro-  
19 curing agencies, in conjunction with the Administrator, can expand  
20 small business participation in Federal contracting opportunities that  
21 have been historically low, despite adequate numbers of qualified small  
22 business contractors in the economy; and

23 (3) expanded use of full and open competition adversely affects small  
24 business participation in certain industry groups, taking into consider-  
25 ation the numerical dominance of small firms, the size and scope of  
26 most contracting opportunities, and the competitive capabilities of  
27 small business concerns.

28 (d) APPLICABILITY.—The program shall apply to contract solicitations for  
29 the procurement of services in the designated industry groups.

30 **§ 24903. Enhanced small business participation goals**

31 (a) ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.—

32 (1) ESTABLISHMENT OF GOALS.—A participating agency shall estab-  
33 lish an annual small business participation goal that is 40 percent of  
34 the dollar value of the contract awards for each of the designated in-  
35 dustry groups.

36 (2) GOOD FAITH EFFORT.—In attaining its small business participa-  
37 tion goal for contract awards for each of the designated industry  
38 groups, a participating agency shall make a good faith effort to ensure  
39 that emerging small business concerns are awarded not less than 15  
40 percent of the dollar value of the contract awards for each of the des-  
41 ignated industry groups.

1 (b) SPECIAL ASSISTANCE FOR EMERGING SMALL BUSINESS CON-  
2 CERNS.—

3 (1) SMALL BUSINESS RESERVE.—All contract opportunities in the  
4 designated industry groups shall be reserved for exclusive competition  
5 among emerging small business concerns in accordance with the com-  
6 petition standard specified in section 25108 of this title if the esti-  
7 mated award value of the contract is equal to or less than the greater  
8 of—

9 (A) \$25,000; or

10 (B) such larger dollar amount as may be established under  
11 paragraph (2).

12 (2) ADJUSTMENTS TO THE SMALL BUSINESS RESERVE.—If the goal  
13 of awarding emerging small business concerns 15 percent of the total  
14 dollar value of contracts in a designated industry group is determined  
15 not to have been attained, on the review of award data conducted in  
16 accordance with subsection (d)(1), the Administrator for Federal Pro-  
17 curement Policy, to ensure attainment of the goal, shall prescribe, on  
18 a semiannual basis, appropriate adjustments to the dollar threshold for  
19 contract opportunities in that designated industry group below which  
20 competition shall be conducted exclusively among emerging small busi-  
21 ness concerns.

22 (3) SMALL BUSINESS SMALL PURCHASE RESERVE.—The require-  
23 ments of this subsection dealing with the reserve amount shall apply  
24 notwithstanding the amount specified in section 25108 of this title.

25 (4) EXCLUSION OF MODIFICATIONS TO EXISTING CONTRACTS ABOVE  
26 THE SMALL PURCHASE THRESHOLD.—Any modification or follow-on  
27 award to a contract having an initial award value in excess of \$25,000  
28 shall not be subject to the limitations on competition required by this  
29 subsection.

30 (c) TARGETING OF INDUSTRY GROUPS WITH LIMITED SMALL BUSINESS  
31 PARTICIPATION.—

32 (1) IN GENERAL.—The head of a participating agency shall imple-  
33 ment a program to expand small business participation in the partici-  
34 pating agency's acquisition of selected products and services in 10 in-  
35 dustry groups (other than the designated industry groups) that have  
36 historically demonstrated low rates of small business participation.

37 (2) DEVELOPMENT.—The products and services to be targeted for  
38 the small business participation expansion program and the special  
39 goals for the program—

40 (A) shall be developed in conjunction with the Administrator;

41 and



1 (B) shall be subject to the requirements of section 25106 of this  
2 title.

3 (3) PRODUCTS AND SERVICES.—The products and services selected  
4 for the small business participation expansion program shall be drawn  
5 from industry groups that—

6 (A) are the recipients of substantial purchases by the Federal  
7 Government;

8 (B) have less than 10 percent of such annual purchases made  
9 from small business concerns; and

10 (C) have significant amounts of small business productive ca-  
11 pacity that have not been utilized by the Government.

12 (4) REQUIREMENTS.—In developing its small business participation  
13 expansion program, a participating agency shall—

14 (A) provide the Administrator a detailed, time-phased strategy  
15 that includes incremental numerical goals; and

16 (B) encourage and promote joint ventures, teaming agreements,  
17 and other similar arrangements that permit small business con-  
18 cerns to compete effectively for contract solicitations for which an  
19 individual small business concern would lack the requisite capacity  
20 or capability needed to establish responsibility for the award of a  
21 contract.

22 (d) MONITORING OF PARTICIPATING AGENCY PERFORMANCE.—

23 (1) IN GENERAL.—A participating agency shall monitor the attain-  
24 ment of its small business participation goals on an annual basis. An  
25 annual review by each participating agency shall be completed not later  
26 than January 31 of each year, based on the data for the preceding fis-  
27 cal year, from October 1 through September 30.

28 (2) COUNTING OF AWARDS.—All awards to small business concerns  
29 shall be counted toward attainment of the goals specified in subsection  
30 (a).

31 (3) MODIFICATIONS.—If an annual review discloses that the rate of  
32 small business participation is less than 40 percent of the contract  
33 awards for a fiscal year, modifications to a participating agency's solici-  
34 tation practices under section 24904(b) of this title shall be made at  
35 the beginning of the fiscal year quarter following the review.

36 **§ 24904. Procurement procedures**

37 (a) FULL AND OPEN COMPETITION.—

38 (1) IN GENERAL.—Except as provided in subsections (b) and (c), a  
39 contract opportunity with an anticipated value of more than \$25,000  
40 for the procurement of services from firms in a designated industry  
41 group (unless set aside under chapter 233 of this title or section 2323

1 of title 10) shall be solicited on an unrestricted basis if the partici-  
 2 participating agency has attained its small business participation goal under  
 3 section 24903(a) of this title.

4 (2) WAIVER OF REGULATORY REQUIREMENTS.—Any regulatory re-  
 5 quirements that are inconsistent with paragraph (1) shall be waived.

6 (b) RESTRICTED COMPETITION.—

7 (1) IN GENERAL.—If a participating agency fails to attain an en-  
 8 hanced small business participation goal, subsequent contracting oppor-  
 9 tunities that are in excess of the reserve thresholds specified under sec-  
 10 tion 24903(b) of this title shall be solicited through a competition re-  
 11 stricted to eligible small business concerns under section 25101 of this  
 12 title only at the buying activities of the participating agency that failed  
 13 to attain the enhanced small business participation goal.

14 (2) RESUMATION OF UNRESTRICTED COMPETITION.—On deter-  
 15 mining that its contract awards to small business concerns again meet  
 16 an enhanced small business participation goal, a participating agency  
 17 shall promptly resume the use of unrestricted solicitations under sub-  
 18 section (a).

19 (3) TIMING.—A modification in the solicitation practices of a partici-  
 20 pating agency under this subsection shall be made as soon as prac-  
 21 ticable, but not later than the beginning of the quarter following com-  
 22 pletion of the review made under section 24903(d) of this title indi-  
 23 cating that a modification to the solicitation practices is required.

24 (c) RELATIONSHIP TO OTHER LAW.—

25 (1) COMPETITION IN CONTRACTING ACT OF 1984.—Subsections (a)  
 26 and (b) do not supersede the application of the Competition in Con-  
 27 tracting Act of 1984 (98 Stat. 1175) (including the amendments made  
 28 by that Act).

29 (2) OTHER APPLICABLE LAW.—A solicitation for the award of a con-  
 30 tract for architectural or engineering service (including surveying and  
 31 mapping) issued by a military department or a Defense agency shall  
 32 comply with the requirements of subsections (a) and (b) of section  
 33 2855 of title 10.

#### 34 **§ 24905. Reporting and collection of data**

35 (a) AWARDS OF \$25,000 OR LESS.—An award of \$25,000 or less made  
 36 by a participating agency for the procurement of a service in any designated  
 37 industry group shall be reported to the Federal Procurement Data Center  
 38 in the same manner as if the purchase were in excess of \$25,000.

39 (b) SIZE AND STATUS OF SMALL BUSINESS CONCERNS.—A participating  
 40 agency shall collect data pertaining to the size of the small business concern  
 41 and the status of the small business concern (as a small business concern

1 owned and controlled by socially and economically disadvantaged individ-  
2 uals) that receives any award for the procurement of—

3 (1) a service in any designated industry group; or

4 (2) a product or service from an industry group selected for partici-  
5 pation in the program under section 24903(e) of this title.

6 **§ 24906. Test plan and policy direction**

7 (a) TEST PLAN.—The Administrator for Federal Procurement Policy may  
8 further specify the manner and conduct of the test activities required by this  
9 chapter through a test plan issued under section 15 of the Office of Federal  
10 Procurement Policy Act (41 U.S.C. 413).

11 (b) POLICY DIRECTION.—The Administrator for Federal Procurement  
12 Policy, in cooperation with the Administrator, shall issue a policy directive  
13 (which shall be binding on all participating agencies) to ensure consistent  
14 Governmentwide implementation of this chapter in the Federal Acquisition  
15 Regulation.

16 **DIVISION G—CONTRACT RESERVATION**  
17 **PROGRAMS**

18 **CHAPTER 251—GENERAL PROVISIONS**

Sec.

25101. Awards of contracts to small business concerns.

25102. Placement of contracts by procuring agency.

25103. Disabled individuals.

25104. Priority for areas of concentrated unemployment or underemployment and for labor  
surplus areas.

25105. Procurement strategies; contract bundling.

25106. Goals for participation by small business concerns in procurement contracts.

25107. No effect on certain small business set-asides.

25108. Mandatory contract reservation.

25109. Offices of Small and Disadvantaged Business Utilization.

25110. Breakout procurement center representatives.

25111. Department of Defense, Coast Guard, and National Aeronautics and Space Adminis-  
tration contract goals.

25112. Actions by procurement center representatives to ensure compliance.

25113. Percentages of contract performance.

19 **§ 25101. Awards of contracts to small business concerns**

20 (a) IN GENERAL.—Subject to subsection (b), a small business concern  
21 shall receive any award or contract (or any part of an award or contract),  
22 and be awarded any contract for the sale of Government property, as to  
23 which the Administrator and the contracting procurement or disposal agency  
24 determine it to be in the interest of—

25 (1) maintaining or mobilizing the Nation's full productive capacity;

26 (2) war or national defense programs;

27 (3) ensuring that a fair proportion of the total purchases and con-  
28 tracts for property and services for the Government in each industry  
29 category are placed with small business concerns; or

30 (4) ensuring that a fair proportion of the total sales of Government  
31 property be made to small business concerns.

1 (b) NO CHANGE IN PREFERENCES OR PRIORITIES.—Nothing in this sub-  
2 title changes any preference or priority established by law with respect to  
3 the sale of electric power or other property by the Government or any Gov-  
4 ernment agency.

5 (c) DETERMINATIONS.—A determination under subsection (a) may be  
6 made for individual awards or contracts or for classes of awards or con-  
7 tracts.

8 (d) INDUSTRY CATEGORIES.—

9 (1) IN GENERAL.—For purposes of subsection (a)(3), an industry  
10 category is a discrete group of similar goods and services.

11 (2) DETERMINATION.—A discrete group of similar goods and serv-  
12 ices shall be determined by the Administrator in accordance with the  
13 definition of a United States industry under the North American In-  
14 dustry Classification System, as established by the Office of Manage-  
15 ment and Budget, except that the Administrator shall limit such an in-  
16 dustry category to a greater extent than provided under the North  
17 American Industry Classification System if the Administrator receives  
18 evidence indicating that further segmentation for purposes of sub-  
19 section (a)(3) is warranted due to special capital equipment needs or  
20 special labor or geographic requirements or to recognize a new indus-  
21 try.

22 (3) LIMITATION.—A market for goods or services may not be seg-  
23 mented under paragraph (2) due to geographic requirements unless—

24 (A) the Government typically designates the area where work  
25 for contracts for such goods or services is to be performed;

26 (B) Government purchases comprise the major portion of the  
27 entire domestic market for such goods or services; and

28 (C) due to the fixed location of facilities, high mobilization  
29 costs, or similar economic factors, it is unreasonable to expect  
30 competition from business concerns located outside the general  
31 areas where the business concerns are located.

32 (4) SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND  
33 SHIP REPAIR.—The Administrator shall segment the industry category  
34 of shipbuilding and ship repair as follows:

35 (A) Nuclear shipbuilding and repair.

36 (B) Non-nuclear shipbuilding.

37 (C) Non-nuclear ship repair, which shall be further segmented  
38 by, at least, east coast and west coast facilities.

39 (e) AVOIDANCE OF CONTRACT BUNDLING.—To foster the participation of  
40 small business concerns in the contracting opportunities of the Government,  
41 a Federal agency, to the maximum extent practicable, shall—

1 (1) foster the participation of small business concerns as prime con-  
2 tractors, subcontractors, and suppliers;

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

6 (3) avoid unnecessary and unjustified bundling of contract require-  
7 ments that precludes participation by small business in procurements  
8 as prime contractors.

9 (f) PROPOSED PROCUREMENTS THAT MAKE PARTICIPATION BY SMALL  
10 BUSINESS CONCERNS UNLIKELY.—

11 (1) NOTIFICATION OF SMALL BUSINESS PROCUREMENT CENTER  
12 REPRESENTATIVE.—If—

13 (A)(i) a proposed procurement includes in its statement of work  
14 a good or service currently being performed by a small business  
15 concern; and

16 (ii) the proposed procurement is in a quantity or estimated dol-  
17 lar value the magnitude of which renders prime contract participa-  
18 tion by small business concerns unlikely;

19 (B) a proposed procurement for construction seeks to package  
20 or consolidate discrete construction projects; or

21 (C) a solicitation involves an unnecessary or unjustified bun-  
22 dling of contract requirements, as determined by the Adminis-  
23 trator;

24 the procurement activity shall, at least 30 days before issuance of the  
25 solicitation, provide to the procurement activity's small business pro-  
26 curement center representative a copy of the proposed procurement and  
27 a statement of explanation.

28 (2) CONTENTS OF STATEMENT OF EXPLANATION.—A statement of  
29 explanation under paragraph (1) shall explain—

30 (A) why the proposed acquisition cannot be divided into reason-  
31 ably small lots (not less than economic production runs) to permit  
32 offers on quantities less than the total requirement;

33 (B) why delivery schedules cannot be established on a realistic  
34 basis that will encourage participation by small business concerns  
35 to the extent consistent with the actual requirements of the Gov-  
36 ernment;

37 (C) why the proposed acquisition cannot be offered so as to  
38 make participation by small business concerns likely;

39 (D) why construction cannot be procured as separate discrete  
40 projects; or

1 (E) why the procurement activity determined that the bundled  
2 contract is necessary and justified.

3 (3) CONCURRENT PROCESS.—The 30-day notification process shall  
4 occur concurrently with other processing steps required before issuance  
5 of the solicitation.

6 (4) ALTERNATIVE PROCUREMENT METHODS.—Within 15 days after  
7 receipt of the proposed procurement and statement of explanation, if  
8 the procurement center representative believes that the procurement as  
9 proposed will render prime contract participation by small business  
10 concerns unlikely, the procurement center representative shall re-  
11 commend to the procurement activity alternative procurement methods  
12 that would increase prime contracting opportunities for small business  
13 concerns.

14 (5) FAILURE TO AGREE.—If the Administrator and the contracting  
15 procurement agency fail to agree, the Administrator shall appeal the  
16 matter to the head of the appropriate Federal agency for determina-  
17 tion.

18 (g) FAIR MARKET PRICE.—A contract may not be awarded under this  
19 section if the award of the contract would result in a cost to the procure-  
20 ment activity that exceeds a fair market price.

21 **§ 25102. Placement of contracts by procuring agency**

22 With respect to any work to be performed the amount of which would  
23 exceed the maximum amount of a contract for which a surety may be guar-  
24 anteed against loss under section 32102 of this title, the contracting pro-  
25 curement agency shall, to the extent practicable, place contracts so as to  
26 allow more than one small business concern to perform the work.

27 **§ 25103. Disabled individuals**

28 (a) DEFINITION OF COMMITTEE.—In this section, the term “Committee”  
29 means the Committee for Purchase From People Who Are Blind or Severely  
30 Disabled established under the first section of the Act of June 25, 1938  
31 (41 U.S.C. 46).

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 2 of the Act of June 25,  
40 1938 (41 U.S.C. 47).

1 (c) MONITORING AND EVALUATION.—The Administrator shall monitor  
2 and evaluate participation under subsection (b).

3 (d) APPEAL.—

4 (1) FILING.—Not later than 10 days after the announcement of a  
5 proposed award of a contract by a Federal agency to a public or private  
6 organization for the disabled, a for-profit small business concern that  
7 has experienced or is likely to experience severe economic injury as the  
8 result of the proposed award may file an appeal of the proposed award  
9 with the Administrator.

10 (2) ALLEVIATION OF INJURY.—If a small business concern files an  
11 appeal of a proposed award under paragraph (1) and the Adminis-  
12 trator, after consultation with the Executive Director of the Committee,  
13 finds that the small business concern has experienced or is likely to ex-  
14 perience severe economic injury as the result of the proposed award,  
15 not later than 30 days after the filing of the appeal, the Administrator  
16 shall require each Federal agency having procurement powers to take  
17 such action as is appropriate to alleviate economic injury sustained or  
18 likely to be sustained by the small business concern.

19 (e) MAXIMUM AMOUNT OF AWARDS.—

20 (1) REPORTING.—A Federal agency having procurement powers  
21 shall report to the Office of Federal Procurement Policy each time a  
22 contract subject to subsection (b) is entered into and shall include in  
23 its report the amount of the next higher bid submitted by a for-profit  
24 small business concern.

25 (2) DATA COLLECTION.—The Office of Federal Procurement Policy  
26 shall collect data reported under paragraph (1) through the Federal  
27 procurement data system and shall report the data to the Adminis-  
28 trator.

29 (3) NOTIFICATION.—The Administrator shall notify all Federal  
30 agencies having procurement powers when the maximum amount of  
31 awards authorized under subsection (b) has been made during any fis-  
32 cal year.

33 (f) CONTRACT PERFORMANCE BY DISABLED INDIVIDUALS.—A contract  
34 may be awarded under this section only if at least 75 percent of the direct  
35 labor performed on each item being produced under the contract in a shel-  
36 tered workshop or performed in providing each type of service under the  
37 contract by a sheltered workshop is performed by disabled individuals.

38 (g) MULTIYEAR CONTRACTS.—A Federal agency that awards one or more  
39 contracts to such a public or private organization for the disabled under this  
40 section may use multiyear contracts, if appropriate.

1 **§ 25104. Priority for areas of concentrated unemployment or**  
 2 **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 **§ 25105. 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 facili-  
 31 tate the maximum participation of small business concerns as prime con-  
 32 tractors, subcontractors, and suppliers.

33 (b) MARKET RESEARCH.—

34 (1) IN GENERAL.—Before proceeding with an acquisition strategy  
 35 that could lead to a contract containing consolidated procurement re-  
 36 quirements, the head of a Federal agency shall conduct market re-  
 37 search to determine whether consolidation of the requirements is nec-  
 38 essary and justified.

39 (2) FACTORS.—For purposes of paragraph (1), consolidation of the  
 40 requirements may be determined as being necessary and justified if, as  
 41 compared with the benefits that would be derived from contracting to



1 meet those requirements if not consolidated, the Federal Government  
2 would derive from the consolidation measurably substantial benefits, in-  
3 cluding any combination of benefits that, in combination, are measur-  
4 ably substantial.

5 (3) BENEFITS.—Benefits described in paragraph (2) may include—

6 (A) cost savings;

7 (B) quality improvements;

8 (C) reduction in acquisition cycle times;

9 (D) better terms and conditions; or

10 (E) any other benefit.

11 (4) REDUCTION OF ADMINISTRATIVE OR PERSONNEL COSTS NOT A  
12 SUFFICIENT JUSTIFICATION.—A reduction of administrative or per-  
13 sonnel costs alone shall not be a justification for bundling of contract  
14 requirements unless the cost savings are expected to be substantial in  
15 relation to the dollar value of the procurement requirements to be con-  
16 solidated.

17 (e) STRATEGY SPECIFICATIONS.—If the head of a procuring agency de-  
18 termines that a proposed procurement strategy for a procurement involves  
19 a substantial bundling of contract requirements, the proposed procurement  
20 strategy shall—

21 (1) identify specifically the benefits anticipated to be derived from  
22 the bundling of contract requirements;

23 (2) set forth an assessment of the specific impediments to participa-  
24 tion by small business concerns as prime contractors that result from  
25 the bundling of contract requirements and specify actions designed to  
26 maximize small business participation as subcontractors (including sup-  
27 pliers) at various tiers under the contract or contracts that are award-  
28 ed to meet the requirements; and

29 (3) include a specific determination that the anticipated benefits of  
30 the proposed bundled contract justify its use.

31 (d) CONTRACT TEAMING.—

32 (1) IN GENERAL.—In the case of a solicitation of offers for a bun-  
33 dled contract that is issued by the head of a Federal agency, a small  
34 business concern may submit an offer that provides for use of a par-  
35 ticular team of subcontractors for the performance of the contract.

36 (2) EVALUATION.—The head of the Federal agency shall evaluate  
37 the offer in the same manner as other offers, with due consideration  
38 to the capabilities of all of the proposed subcontractors.

39 (3) NO EFFECT ON STATUS AS SMALL BUSINESS CONCERN.—  
40 Teaming by a small business concern under this subsection shall not

1 affect the status of the small business concern as a small business con-  
 2 cern for any other purpose.

3 (e) DATABASE AND ANALYSIS WITH RESPECT TO BUNDLED CON-  
 4 TRACTS.—

5 (1) DATABASE.—The Administrator shall maintain a database con-  
 6 taining information regarding—

7 (A) each bundled contract awarded by a Federal agency; and

8 (B) each small business concern that has been displaced as a  
 9 prime contractor as a result of the award of a bundled contract.

10 (2) ANALYSIS.—For each bundled contract that is to be recompeted  
 11 as a bundled contract, the Administrator shall determine—

12 (A) the amount of savings and benefits (in accordance with sub-  
 13 section (b)) achieved under the bundling of contract requirements;  
 14 and

15 (B) whether such savings and benefits will continue to be real-  
 16 ized if the contract remains bundled, and whether such savings  
 17 and benefits would be greater if the procurement requirements  
 18 were divided into separate solicitations suitable for award to small  
 19 business concerns.

20 (3) ACCESS TO DATA.—

21 (A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the  
 22 implementation of this subsection and section 10706 of this title,  
 23 the Administrator shall have access to information collected  
 24 through the Federal Procurement Data System.

25 (B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the  
 26 implementation of this subsection and section 10706 of this title,  
 27 the head of each procuring agency shall provide, on request of the  
 28 Administrator, procurement information collected through existing  
 29 agency data collection sources.

30 **§ 25106. Goals for participation by small business concerns**  
 31 **in procurement contracts**

32 (a) GOVERNMENTWIDE GOALS.—

33 (1) IN GENERAL.—The President shall annually establish Govern-  
 34 mentwide goals for procurement contracts awarded to small business  
 35 concerns (including qualified HUBZone small business concerns, small  
 36 business concerns owned and controlled by service-disabled veterans,  
 37 small business concerns owned and controlled by socially and economi-  
 38 cally disadvantaged individuals, small business concerns owned and  
 39 controlled by women, and other small business concerns).

40 (2) OVERALL GOAL.—The overall Governmentwide goal for participa-  
 41 tion by small business concerns shall be established at not less than

1           23 percent of the total value of all prime contract awards for each fis-  
2 cal year.

3           (3) GOALS FOR SPECIFIC TYPES OF SMALL BUSINESS CONCERN.—

4           (A) QUALIFIED HUBZONE SMALL BUSINESS CONCERNS.—The  
5 Governmentwide goal for participation by qualified HUBZone  
6 small business concerns shall be established at not less than 3 per-  
7 cent of the total value of all prime contract awards for each fiscal  
8 year.

9           (B) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
10 SERVICE-DISABLED VETERANS.—The Governmentwide goal for  
11 participation by small business concerns owned and controlled by  
12 service-disabled veterans shall be established at not less than 3  
13 percent of the total value of all prime contract and subcontract  
14 awards for each fiscal year.

15           (C) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
16 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—  
17 The Governmentwide goal for participation by small business con-  
18 cerns owned and controlled by socially and economically disadvan-  
19 taged individuals shall be established at not less than 5 percent  
20 of the total value of all prime contract and subcontract awards for  
21 each fiscal year.

22           (D) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
23 WOMEN.—The Governmentwide goal for participation by small  
24 business concerns owned and controlled by women shall be estab-  
25 lished at not less than 5 percent of the total value of all prime  
26 contract and subcontract awards for each fiscal year.

27           (4) FEDERAL AGENCY GOALS.—

28           (A) IN GENERAL.—Notwithstanding the Governmentwide goal,  
29 each Federal agency shall have an annual goal that presents, for  
30 that Federal agency, the maximum practicable opportunity for  
31 small business concerns (including qualified HUBZone small busi-  
32 ness concerns, small business concerns owned and controlled by  
33 service-disabled veterans, small business concerns owned and con-  
34 trolled by socially and economically disadvantaged individuals,  
35 small business concerns owned and controlled by women, and other  
36 small business concerns) to participate in the performance of con-  
37 tracts let by the Federal agency.

38           (B) CUMULATIVE FEDERAL AGENCY GOALS TO MEET OR EX-  
39 CEED GOVERNMENTWIDE GOAL.—The Administrator and the Ad-  
40 ministrator of the Office of Federal Procurement Policy shall,  
41 when exercising authority under subsection (b), ensure that the

1 cumulative annual prime contract goals for all Federal agencies  
2 meet or exceed the annual Governmentwide prime contract goal  
3 established by the President under this subsection.

4 (5) PROCUREMENT PROCEDURES.—

5 (A) IN GENERAL.—To facilitate the attainment of a goal for the  
6 participation of small business concerns owned and controlled by  
7 socially and economically disadvantaged individuals that is estab-  
8 lished for a Federal agency under this subsection, the head of the  
9 Federal agency may enter into contracts using—

10 (i) less than full and open competition by restricting the  
11 competition for such awards to small business concerns owned  
12 and controlled by socially and economically disadvantaged in-  
13 dividuals; and

14 (ii) a price evaluation preference not in excess of 10 per-  
15 cent when evaluating an offer received from a small business  
16 concern owned and controlled by socially and economically  
17 disadvantaged individuals as the result of an unrestricted so-  
18 licitation.

19 (B) APPLICABILITY.—Subparagraph (A) does not apply to the  
20 Department of Defense, the Coast Guard, or the National Aero-  
21 nautics and Space Administration.

22 (C) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION  
23 REGULATION.—

24 (i) IN GENERAL.—The Federal Acquisition Regulation shall  
25 provide for uniform implementation of the authority provided  
26 in subparagraph (A).

27 (ii) MATTERS TO BE ADDRESSED.—The provisions of the  
28 Federal Acquisition Regulation under clause (i) shall in-  
29 clude—

30 (I) conditions for the use of advance payments;

31 (II) provisions for contract payment terms that pro-  
32 vide for—

33 (aa) accelerated payment for work performed dur-  
34 ing the period for contract performance; and

35 (bb) full payment for work performed;

36 (III) guidance on how contracting officers may use, in  
37 solicitations for various classes of products or services, a  
38 price evaluation preference under subparagraph (A)(ii),  
39 to provide a reasonable advantage to small business con-  
40 cerns owned and controlled by socially and economically

1                   disadvantaged individuals without effectively eliminating  
2                   any participation of other small business concerns; and

3                   (IV)(aa) procedures for a person to request the head  
4                   of a Federal agency to determine whether the use of  
5                   competitions restricted to small business concerns owned  
6                   and controlled by socially and economically disadvan-  
7                   tagged individuals at a contracting activity of the Federal  
8                   agency has caused a particular industry category to bear  
9                   a disproportionate share of the contracts awarded to at-  
10                  tain the goal established for that contracting activity;  
11                  and

12                  (bb) guidance for limiting the use of such restricted  
13                  competitions in the case of any contracting activity and  
14                  class of contracts determined in accordance with such  
15                  procedures to have caused a particular industry category  
16                  to bear a disproportionate share of the contracts award-  
17                  ed to attain the goal established for that contracting ac-  
18                  tivity.

19                  (D) TERMINATION.—This paragraph shall cease to be effective  
20                  at the end of September 30, 2003.

21                  (b) FEDERAL AGENCY GOALS.—

22                  (1) IN GENERAL.—The Administrator and the head of each Federal  
23                  agency shall jointly establish goals for the participation by small busi-  
24                  ness concerns (including qualified HUBZone small business concerns,  
25                  small business concerns owned and controlled by service-disabled vet-  
26                  erans, small business concerns owned and controlled by socially and  
27                  economically disadvantaged individuals, small business concerns owned  
28                  and controlled by women, and other small business concerns) in pro-  
29                  curement contracts of the Federal agency.

30                  (2) REQUIREMENTS.—The goals of a Federal agency established  
31                  under paragraph (1) shall—

32                  (A) present, for that Federal agency, the maximum practicable  
33                  opportunity for small business concerns (including qualified  
34                  HUBZone small business concerns, small business concerns owned  
35                  and controlled by service-disabled veterans, small business con-  
36                  cerns owned and controlled by socially and economically disadvan-  
37                  tagged individuals, small business concerns owned and controlled by  
38                  women, and other small business concerns) to participate in the  
39                  performance of contracts let by the Federal agency; and

40                  (B) realistically reflect the potential of qualified HUBZone  
41                  small business concerns, small business concerns owned and con-

1 trolled by service-disabled veterans, small business concerns owned  
2 and controlled by socially and economically disadvantaged individ-  
3 uals, small business concerns owned and controlled by women, and  
4 other small business concerns to perform such contracts and to  
5 perform subcontracts under such contracts.

6 (3) DISAGREEMENT.—If the Administrator and the head of a Fed-  
7 eral agency fail to agree on established goals, the disagreement shall  
8 be submitted to the Administrator for Federal Procurement Policy for  
9 final determination.

10 (4) EXPANSION OF PARTICIPATION.—

11 (A) IN GENERAL.—For the purpose of establishing goals under  
12 this section, the head of a Federal agency shall make consistent  
13 efforts to annually expand participation by small business concerns  
14 from each industry category in procurement contracts of the agen-  
15 cy, including participation by qualified HUBZone small business  
16 concerns, small business concerns owned and controlled by service-  
17 disabled veterans, small business concerns owned and controlled by  
18 socially and economically disadvantaged individuals, and small  
19 business concerns owned and controlled by women.

20 (B) CONSIDERATIONS.—The head of a Federal agency, in at-  
21 tempting to attain such participation, shall 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 (c) REPORTING BY FEDERAL AGENCIES.—

28 (1) IN GENERAL.—At the end of each fiscal year, the head of a Fed-  
29 eral agency shall submit to the Administrator a report on the extent  
30 of participation by small business concerns (including qualified  
31 HUBZone small business concerns, small business concerns owned and  
32 controlled by service-disabled veterans, small business concerns owned  
33 and controlled by socially and economically disadvantaged individuals,  
34 small business concerns owned and controlled by veterans, small busi-  
35 ness concerns owned and controlled by women, and other small busi-  
36 ness concerns) in procurement contracts of the Federal agency.

37 (2) CONTENTS.—A report under paragraph (1) shall contain appro-  
38 priate justifications for failure to meet the goals under this section.

1 **§ 25107. No effect on certain small business setasides**

2 (a) IN GENERAL.—Nothing in this chapter or any other provision of law  
3 precludes exclusive small business setasides for procurements of architec-  
4 tural and engineering services, research, development, test, and evaluation.

5 (b) AUTHORITY.—A Federal agency may develop setasides described in  
6 subsection (a) to further the interests of small business in the areas de-  
7 scribed in that subsection.

8 **§ 25108. Mandatory contract reservation**

9 (a) IN GENERAL.—A contract for the purchase of a good or service that  
10 has an anticipated value greater than \$2,500 but not greater than \$100,000  
11 shall be reserved exclusively for small business concerns unless the con-  
12 tracting officer is unable to obtain offers from 2 or more small business con-  
13 cerns that are—

14 (1) competitive with market prices; and

15 (2) competitive with regard to the quality and delivery of the good  
16 or service being purchased.

17 (b) CONSIDERATION OF TIMELY OFFERS.—In carrying out subsection  
18 (a), a contracting officer shall consider a responsive offer timely received  
19 from an eligible small business concern offeror.

20 (c) EFFECT OF SECTION.—Nothing in this section precludes an award of  
21 a contract with a value not greater than \$100,000 under—

22 (1) division B of this subtitle;

23 (2) section 2323 of title 10;

24 (3) section 24903 of this title; or

25 (4) section 25106(a)(4) of this title.

26 **§ 25109. Offices of Small and Disadvantaged Business Utili-**  
27 **zation**

28 (a) DEFINITIONS.—In this section:

29 (1) DIRECTOR.—The term “Director” means the Director of Small  
30 and Disadvantaged Business Utilization of a Federal agency appointed  
31 under subsection (c).

32 (2) OFFICE.—The term “Office” means the Office of Small and Dis-  
33 advantaged Business Utilization of a Federal agency established by  
34 subsection (b).

35 (b) ESTABLISHMENT OF OFFICES.—There is established in each Federal  
36 agency having procurement powers an office to be known as the Office of  
37 Small and Disadvantaged Business Utilization.

38 (c) DIRECTOR.—

39 (1) IN GENERAL.—The management of an Office shall be vested in  
40 an officer or employee of the Federal agency, appointed by the head

1 of the Federal agency, who shall be known as the Director of Small  
2 and Disadvantaged Business Utilization for the Federal agency.

3 (2) LINE OF AUTHORITY.—The Director for a Federal agency shall  
4 be responsible only to, and report directly to, the head or deputy head  
5 of the Federal agency, except that the Director in the Department of  
6 Defense shall be responsible only to, and report directly to, the Sec-  
7 retary of Defense or any other designee of the Secretary.

8 (d) GENERAL RESPONSIBILITIES.—The Director for a Federal agency  
9 shall be responsible for the implementation and execution of the functions  
10 and duties under this chapter and divisions E and F that relate to the Fed-  
11 eral agency.

12 (e) DUTIES.—The Director for a Federal agency shall—

13 (1)(A) identify proposed solicitations that involve significant bun-  
14 dling of contract requirements; and

15 (B) work with the agency acquisition officials and the Administrator  
16 to revise the procurement strategies for such proposed solicitations  
17 where appropriate to increase the probability of participation by small  
18 business concerns as prime contractors or to facilitate small business  
19 concern participation as subcontractors and suppliers, if a solicitation  
20 for a bundled contract is to be issued; and

21 (2) assist small business concerns in obtaining payments, required  
22 late payment interest penalties, or information regarding payments due  
23 to small business concerns from an executive agency or a contractor,  
24 in conformity with chapter 39 of title 31 or any other protection for  
25 contractors or subcontractors (including suppliers) that is included in  
26 the Federal Acquisition Regulation or any individual agency supple-  
27 ment to the Governmentwide regulation.

28 (f) SUPERVISORY AUTHORITY.—The Director for a Federal agency shall  
29 have supervisory authority over personnel of the Federal agency to the ex-  
30 tent that the functions and duties of those personnel relate to functions and  
31 duties under this chapter and divisions E and F.

32 (g) SMALL BUSINESS TECHNICAL ADVISERS.—

33 (1) ASSIGNMENT.—The Director for a Federal agency shall assign  
34 a small business technical adviser to each office to which the Adminis-  
35 trator assigns a procurement center representative.

36 (2) QUALIFICATIONS.—A small business technical adviser—

37 (A) shall be a full-time employee of the procurement activity;  
38 and

39 (B) shall be well qualified, technically trained, and familiar with  
40 the goods or services purchased at the procurement activity.



1           (3) PRINCIPAL DUTY.—The principal duty of a small business tech-  
2           nical adviser shall be to assist the Administration procurement center  
3           representative in carrying out duties and functions relating to this  
4           chapter and divisions E and F.

5           (h) COOPERATION AND CONSULTATION.—The Director for a Federal  
6           agency shall cooperate, and consult on a regular basis, with the Adminis-  
7           trator with respect to carrying out the functions and duties described in  
8           subsection (d).

9           (i) RECOMMENDATIONS CONCERNING AWARD OF CONTRACTS.—

10           (1) IN GENERAL.—The Director for a Federal agency shall make  
11           recommendations to contracting officers concerning whether a par-  
12           ticular contract requirement should be awarded pursuant to section  
13           25101 of this title, division E of this subtitle, or section 2323 of title  
14           10.

15           (2) CONSIDERATIONS.—A recommendation under paragraph (1)  
16           shall be made with due regard to the requirements of sections 25111  
17           and 25112 of this title.

18           (3) DOCUMENTATION OF FAILURE TO ACCEPT RECOMMENDATION.—  
19           The failure of a contracting officer to accept a recommendation under  
20           paragraph (1) shall be documented and included within the appropriate  
21           contract file.

22           (j) APPLICABILITY OF SECTION.—This section does not apply to the Ad-  
23           ministration.

24           **§ 25110. Breakout procurement center representatives**

25           (a) DEFINITION OF MAJOR PROCUREMENT CENTER.—In this section, the  
26           term “major procurement center” means a procurement center that—

27           (1) in the opinion of the Administrator, purchases substantial dollar  
28           amounts of other than commercial items; and

29           (2) has the potential to incur significant savings as the result of the  
30           assignment of a breakout procurement center representative.

31           (b) ASSIGNMENT OF BREAKOUT PROCUREMENT CENTER REPRESENTA-  
32           TIVES.—

33           (1) IN GENERAL.—The Administration shall assign to each major  
34           procurement center a breakout procurement center representative with  
35           such assistance as may be appropriate.

36           (2) ADDITIONAL POSITION.—A breakout procurement center rep-  
37           resentative shall be in addition to the procurement center representa-  
38           tive referred to in section 25109(g)(1) of this title.

39           (c) ADVOCACY.—A breakout procurement center representative shall be  
40           an advocate for—

1           (1) the breakout of items for procurement through full and open  
2 competition, whenever appropriate, while maintaining the integrity of  
3 the system in which items are used; and

4           (2) the use of full and open competition, whenever appropriate, for  
5 the procurement of goods and services by a major procurement center.

6       (d) FUNCTIONS.—In addition to carrying out the responsibilities assigned  
7 by the Administrator, a breakout procurement center representative may—

8           (1)(A) attend any provisioning conference or similar evaluation ses-  
9 sion during which determinations are made concerning whether require-  
10 ments are to be procured through other than full and open competition;  
11 and

12           (B) make recommendations with respect to those requirements to the  
13 members of the conference or session;

14           (2)(A) review, at any time, restrictions on competition previously im-  
15 posed on items through acquisition method coding or similar proce-  
16 dures; and

17           (B) recommend to personnel of the appropriate activity the prompt  
18 reevaluation of such limitations;

19           (3)(A) review restrictions on competition arising out of restrictions  
20 on the rights of the United States in technical data; and

21           (B) when appropriate, recommend that personnel of the appropriate  
22 activity initiate a review of the validity of such an asserted restriction;

23           (4) obtain from any governmental source, and make available to per-  
24 sonnel of the appropriate activity, technical data necessary for the  
25 preparation of a competitive solicitation package for any item of a good  
26 or service previously procured noncompetitively due to the unavail-  
27 ability of such technical data;

28           (5) have access to procurement records and other data of the major  
29 procurement center commensurate with the level of the breakout pro-  
30 curement center representative's approved security clearance classifica-  
31 tion;

32           (6)(A) receive unsolicited engineering proposals; and

33           (B) when appropriate—

34           (i)(I) conduct a value analysis of a proposal to determine wheth-  
35 er the proposal, if adopted, will result in lower costs to the United  
36 States without substantially impeding legitimate acquisition objec-  
37 tives; and

38           (II) forward to personnel of the appropriate activity rec-  
39 ommendations with respect to the proposal; or

40           (ii) forward a proposal without analysis to personnel of the ac-  
41 tivity responsible for reviewing such proposals, which personnel

1           shall furnish the breakout procurement center representative with  
2           information regarding the disposition of the proposal; and

3           (7) review the systems that account for the acquisition and manage-  
4           ment of technical data within the major procurement center to ensure  
5           that the systems provide the maximum availability and access to data  
6           that—

7           (A) are needed for the preparation of offers to sell to the United  
8           States the goods and services to which the data pertain; and

9           (B) potential offerors are entitled to receive.

10          (e) APPEAL OF FAILURE TO ACT FAVORABLY ON RECOMMENDATION.—

11           (1) IN GENERAL.—A breakout procurement center representative  
12           may appeal the failure to act favorably on any recommendation made  
13           under subsection (d).

14           (2) PROCEDURE.—An appeal under paragraph (1) shall be filed and  
15           processed in the same manner and shall be subject to the same condi-  
16           tions and limitations as an appeal filed by the Administrator under sec-  
17           tion 25101(f)(5) of this title.

18          (f) SMALL BUSINESS TECHNICAL ADVISERS.—

19           (1) IN GENERAL.—The Administrator shall assign and co-locate at  
20           least 2 small business technical advisers to each major procurement  
21           center in addition to such other advisers as may be authorized from  
22           time to time.

23           (2) DUTIES.—The sole duties of small business technical advisers as-  
24           signed under paragraph (1) shall be—

25           (A) to assist the breakout procurement center representative for  
26           the center to which the small business technical advisers are as-  
27           signed in carrying out the functions described in subsection (d);  
28           and

29           (B) to assist the procurement center representative for each of-  
30           fice to which the Administrator assigns a procurement center rep-  
31           resentative.

32          (g) STATUS; QUALIFICATIONS.—

33           (1) IN GENERAL.—A breakout procurement center representative  
34           and a small business technical adviser—

35           (A) shall be full-time employees of the Administration; and

36           (B) shall be fully qualified, technically trained, and familiar with  
37           the goods and services procured by the major procurement center  
38           to which the individual is assigned.

39           (2) ACCREDITED ENGINEER.—In addition to the requirements of  
40           paragraph (1), a breakout procurement center representative and at

1           least one small business technical adviser assigned under this section  
2           shall be accredited engineers.

3           (h) PERSONNEL POSITIONS.—The Administrator shall establish personnel  
4           positions for breakout procurement representatives and small business tech-  
5           nical advisers assigned under this section that are classified at a grade level  
6           of the General Schedule sufficient to attract and retain highly qualified per-  
7           sonnel.

8           (i) FAMILIARIZATION SESSIONS.—

9                (1) IN GENERAL.—At such times as the Administrator considers ap-  
10              propriate, a breakout procurement center representative shall conduct  
11              familiarization sessions for contracting officers and other appropriate  
12              personnel of the major procurement center to which the breakout pro-  
13              curement center representative is assigned.

14              (2) PURPOSE.—A familiarization session shall acquaint the partici-  
15              pants with, and instruct the participants in methods designed to fur-  
16              ther the purposes of, this section.

17           (j) BRIEFING AND REPORT.—

18                (1) IN GENERAL.—A breakout procurement center representative  
19              shall prepare and personally deliver an annual briefing and report to  
20              the head of the major procurement center to which the breakout pro-  
21              curement center representative is assigned.

22                (2) CONTENTS.—A briefing and report under paragraph (1) shall—

23                    (A) detail the past and planned activities of the breakout pro-  
24                    curement center representative; and

25                    (B) contain such recommendations for improvement in the oper-  
26                    ation of the major procurement center as may be appropriate.

27                (3) RESPONSE.—The head of the major procurement center shall—

28                    (A) personally receive the briefing and report; and

29                    (B) not later than 60 calendar days after receipt, respond, in  
30                    writing, to each recommendation made by the breakout procure-  
31                    ment center representative.

32           (k) STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PRO-  
33           CUREMENT CENTER REPRESENTATIVES.—The Administrator and the  
34           Comptroller General shall jointly establish standards for measuring—

35                (1) cost savings achieved through the efforts of breakout procure-  
36                ment center representatives; and

37                (2) the extent to which competition has been increased as a result  
38                of those efforts.

1    **§ 25111. Department of Defense, Coast Guard, and National**  
2                    **Aeronautics and Space Administration contract**  
3                    **goals**

4            A Federal agency subject to the requirements of section 2323 of title 10  
5 shall, when implementing those requirements—

6            (1) establish policies and procedures that ensure that there will be  
7            no reduction in the number or dollar value of contracts awarded under  
8            this chapter or division E to achieve any goal or other program objec-  
9            tive; and

10           (2) ensure that those requirements will not alter or change the pro-  
11           curement process used to implement this chapter or division E.

12    **§ 25112. Actions by procurement center representatives to**  
13                    **ensure compliance**

14            A procurement center representative assigned under section 25109 or  
15            25110 of this title, in addition to such other duties as the Administrator  
16            may assign, shall—

17            (1) monitor the performance of the procurement activities to which  
18            the procurement center representative is assigned to ascertain the de-  
19            gree of compliance with the requirements of section 25111 of this title;

20            (2) report to the procurement center representative's immediate su-  
21            pervisors all instances of noncompliance with those requirements; and

22            (3) increase, insofar as possible, the number and dollar value of pro-  
23            curements that may be used for the programs established under this  
24            chapter, division E of this subtitle, and section 2323 of title 10.

25    **§ 25113. Percentages of contract performance**

26            (a) IN GENERAL.—A concern may not be awarded a contract under sec-  
27            tion 25101 of this title as a small business concern unless the concern  
28            agrees that—

29            (1) in the case of a contract for services (except construction), at  
30            least 50 percent of the cost of contract performance incurred for per-  
31            sonnel shall be expended for employees of the concern;

32            (2) in the case of a contract for procurement of goods (other than  
33            procurement from a regular dealer in such goods), the concern will per-  
34            form work for at least 50 percent of the cost of manufacturing the  
35            goods (not including the cost of materials).

36            (b) CHANGE IN PERCENTAGE.—The Administrator may change the per-  
37            centage under paragraph (1) or (2) of subsection (a) if the Administrator  
38            determines that a change is necessary to reflect conventional industry prac-  
39            tices among business concerns that are below the numerical size standard  
40            for businesses in that industry category.

1 (c) REQUIREMENTS APPLICABLE TO OTHER CONTRACTS.—The Adminis-  
 2 trator shall establish, through public rulemaking, requirements similar to  
 3 those specified in subsection (a) to be applicable to contracts for general and  
 4 specialty construction and to contracts for any other industry category not  
 5 otherwise subject to the requirements of that subsection. The percentage ap-  
 6 plicable to any such requirement shall be determined in accordance with  
 7 subsection (b).

## 8 CHAPTER 253—HUBZONE PROGRAM

Sec.

- 25301. Definitions.
- 25302. Establishment of HUBZone program.
- 25303. Sole source contracts.
- 25304. Restricted competition.
- 25305. Appeal of decision not to award contract.
- 25306. Price evaluation preference in full and open competition.
- 25307. Relationship to other contracting preferences.
- 25308. Verification of eligibility.
- 25309. Regulations.
- 25310. List of qualified HUBZone small business concerns.
- 25311. Penalties.

### 9 § 25301. Definitions

10 In this chapter:

11 (1) **BASE CLOSURE AREA.**—The term “base closure area” means  
 12 land within the external boundaries of a military installation that was  
 13 closed through a privatization process under—

14 (A) the Defense Base Closure and Realignment Act of 1990  
 15 (part A of title XXIX of division B of Public Law 101–510; 10  
 16 U.S.C. 2687 note);

17 (B) title II of the Defense Authorization Amendments and Base  
 18 Closure and Realignment Act (Public Law 100–526; 10 U.S.C.  
 19 2687 note);

20 (C) section 2687 of title 10; or

21 (D) any other provision of law authorizing or directing the Sec-  
 22 retary of Defense or the Secretary of a military department to dis-  
 23 pose of real property at the military installation for purposes relat-  
 24 ing to base closures or redevelopment, while retaining the author-  
 25 ity to enter into a leaseback of all or a portion of the property  
 26 for military use.

27 (2) **FULL AND OPEN COMPETITION.**—The term “full and open com-  
 28 petition” has the meaning given the term in section 4 of the Office of  
 29 Federal Procurement Policy Act (41 U.S.C. 403).

30 (3) **HISTORICALLY UNDERUTILIZED BUSINESS ZONE.**—The term  
 31 “historically underutilized business zone” means an area located within  
 32 one or more—

33 (A) qualified census tracts;

- 1 (B) qualified nonmetropolitan counties;
- 2 (C) areas of land within the external boundaries of an Indian  
3 reservation;
- 4 (D) redesignated areas; or
- 5 (E) base closure areas (until the date that is 5 years after the  
6 date of final closure of a base closure area).
- 7 (4) HUBZONE.—The term “HUBZone” means a historically under-  
8 utilized business zone.
- 9 (5) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone  
10 small business concern” means—
- 11 (A) a small business concern that is at least 51 percent owned  
12 and controlled by United States citizens;
- 13 (B) a small business concern that is—
- 14 (i) an Alaska Native Corporation owned and controlled by  
15 Natives (as determined under section 29(e)(1) of the Alaska  
16 Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or
- 17 (ii) a direct or indirect subsidiary corporation, joint ven-  
18 ture, or partnership of an Alaska Native Corporation quali-  
19 fying under section 29(e)(1) of the Alaska Native Claims Set-  
20 tlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint  
21 venture, or partnership is owned and controlled by Natives  
22 (as determined under section 29(e)(2) of the Alaska Native  
23 Claims Settlement Act (43 U.S.C. 1626(e)(2)));
- 24 (C) a small business concern—
- 25 (i) that is wholly owned by one or more Indian tribal gov-  
26 ernments, or by a corporation that is wholly owned by one or  
27 more Indian tribal governments; or
- 28 (ii) that is owned in part by one or more Indian tribal gov-  
29 ernments, or by a corporation that is wholly owned by one or  
30 more Indian tribal governments, if all other owners are either  
31 United States citizens or small business concerns;
- 32 (D) a small business concern that is—
- 33 (i) wholly owned by a community development corporation  
34 that has received financial assistance under part 1 of sub-  
35 chapter A of the Community Economic Development Act of  
36 1981 (42 U.S.C. 9805 et seq.); or
- 37 (ii) owned in part by one or more community development  
38 corporations, if all other owners are either United States citi-  
39 zens or small business concerns; or
- 40 (E) a small business concern that is—

1 (i) a small agricultural cooperative organized or incor-  
2 porated in the United States;

3 (ii) wholly owned by one or more small agricultural co-  
4 operatives organized or incorporated in the United States; or

5 (iii) owned in part by one or more small agricultural co-  
6 operatives organized or incorporated in the United States, if  
7 all owners are small business concerns or United States citi-  
8 zens.

9 (6) PROGRAM.—The term “program” means the HUBZone program.

10 (7) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

11 (A) IN GENERAL.—The term “qualified HUBZone small busi-  
12 ness concern” means a small business concern—

13 (i) that certifies in writing to the Administrator (or with  
14 respect to which the Administrator otherwise determines,  
15 based on information submitted to the Administrator by the  
16 small business concern, or based on certification procedures  
17 established under section 25309 of this title) that—

18 (I) it is a HUBZone small business concern—

19 (aa) under subparagraph (A), (B), (C), (D), or  
20 (E) of paragraph (5), and its principal office is lo-  
21 cated in a HUBZone and not fewer than 35 percent  
22 of its employees reside in a HUBZone; or

23 (bb) under paragraph (5)(C), and not fewer than  
24 35 percent of its employees engaged in performing  
25 a contract awarded to the small business concern on  
26 the basis of a preference provided under the  
27 HUBZone program reside within any Indian res-  
28 ervation governed by one or more of the tribal gov-  
29 ernment owners, or reside within any HUBZone ad-  
30 joining any such Indian reservation;

31 (II) the small business concern will attempt to main-  
32 tain the applicable employment percentage under sub-  
33 clause (I) during the performance of any contract award-  
34 ed to the small business concern on the basis of a pref-  
35 erence provided this chapter; and

36 (III) with respect to any subcontract entered into by  
37 the small business concern under a contract awarded to  
38 the small business concern under this chapter, the small  
39 business concern will ensure that—

40 (aa) in the case of a contract for a service (except  
41 construction), not less than 50 percent of the cost



1 of contract performance incurred for personnel will  
 2 be expended for its employees or for employees of  
 3 other HUBZone small business concerns;

4 (bb) in the case of a contract for procurement of  
 5 a supply (other than procurement from a regular  
 6 dealer in the supply), not less than 50 percent of  
 7 the cost of manufacturing the supply (not including  
 8 the cost of material) will be incurred in connection  
 9 with the performance of the contract in a HUBZone  
 10 by one or more HUBZone small business concerns;

11 (cc) in the case of a contract for general or speci-  
 12 alty construction or a contract for any other in-  
 13 dustry category that is not otherwise subject to the  
 14 requirements of item (aa) or (bb), the small busi-  
 15 ness concern meets requirements established by reg-  
 16 ulation under section 25309(b) of this title; and

17 (dd) in the case of a contract for the procurement  
 18 by the Secretary of Agriculture of an agricultural  
 19 commodity, none of the commodity being procured  
 20 will be obtained by the prime contractor through a  
 21 subcontract for the purchase of the commodity in  
 22 substantially the final form in which it is to be sup-  
 23 plied to the Government; and

24 (ii) with respect to which no certification made or informa-  
 25 tion provided by the small business concern under clause (i)  
 26 has been, in accordance with the procedures established under  
 27 section 25308 of this title—

28 (I) successfully challenged by an interested party; or

29 (II) otherwise determined by the Administrator to be  
 30 materially false.

31 (B) CHANGE IN PERCENTAGES.—The Administrator may utilize  
 32 a percentage other than the percentage specified in item (aa) or  
 33 (bb) of subparagraph (A)(i)(III) if the Administrator determines  
 34 that such action is necessary to reflect conventional industry prac-  
 35 tices among small business concerns that are below the numerical  
 36 size standard for businesses in that industry category.

37 (8) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified  
 38 nonmetropolitan county” means a county—

39 (A) that was not located in a metropolitan statistical area (as  
 40 defined in section 143(k)(2)(B) of the Internal Revenue Code of  
 41 1986 (26 U.S.C. 143(k)(2)(B))) at the time of the most recent

1 census taken for purposes of selecting qualified census tracts  
 2 under section 42(d)(5)(C)(ii) of the Internal Revenue Code of  
 3 1986 (26 U.S.C. 42(d)(5)(C)(ii)); and

4 (B) in which—

5 (i) the median household income is less than 80 percent of  
 6 the nonmetropolitan State median household income, based  
 7 on the most recent data available from the Bureau of the  
 8 Census of the Department of Commerce;

9 (ii) the unemployment rate is not less than 140 percent of  
 10 the average unemployment rate for the United States or for  
 11 the State in which the county is located, whichever is less,  
 12 based on the most recent data available from the Secretary  
 13 of Labor; or

14 (iii) there is located a difficult development area, as des-  
 15 ignated by the Secretary of Housing and Urban Development  
 16 in accordance with section 42(d)(5)(C)(iii) of the Internal  
 17 Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(iii)), within  
 18 Alaska, Hawaii, or any territory or possession of the United  
 19 States outside the 48 contiguous States.

20 (9) REDESIGNATED AREA.—

21 (A) IN GENERAL.—Subject to subparagraph (B), the term “re-  
 22 designated area” means—

23 (i) a census tract that was, but ceases to be, a qualified  
 24 census tract; and

25 (ii) a nonmetropolitan county that was, but ceases to be,  
 26 a qualified nonmetropolitan county.

27 (B) LIMITATION.—A census tract or nonmetropolitan county de-  
 28 scribed in subparagraph (A) shall cease to be a redesignated area  
 29 on the later of—

30 (i) the date on which the Bureau of the Census publicly re-  
 31 leases the first results from the 2010 decennial census; or

32 (ii) 3 years after the date on which the census tract or non-  
 33 metropolitan county ceases to be a qualified census tract or  
 34 qualified nonmetropolitan county.

35 **§ 25302. Establishment of HUBZone program**

36 There is established within the Administration a program to be carried  
 37 out by the Administrator, to be known as the HUBZone program, to pro-  
 38 vide for Federal contracting assistance to qualified HUBZone small busi-  
 39 ness concerns in accordance with this chapter.

**§ 25303. Sole source contracts**

Notwithstanding any other provision of law, a contracting officer may award a sole source contract under the program to a qualified HUBZone small business concern if—

(1) the contracting officer or the Administrator determines that the qualified HUBZone small business concern is a responsible contractor with respect to performance of the contract opportunity;

(2) the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

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

(A) \$5,500,000 (subject to adjustment under section 35A of the Office of Federal Procurement Policy Act (41 U.S.C. 431a)), in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or

(B) \$3,500,000 (subject to adjustment under section 35A of the Office of Federal Procurement Policy Act (41 U.S.C. 431a)), in the case of all other contract opportunities; and

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

**§ 25304. Restricted competition**

Notwithstanding any other law, a contract opportunity shall be awarded under the program on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that—

(1) not fewer than 2 qualified HUBZone small business concerns will submit offers; and

(2) the award can be made at a fair market price.

**§ 25305. Appeal of decision not to award contract**

Notwithstanding any other law, not later than 5 days after the date on which the Administrator is notified of a decision by a contracting officer of a Federal agency not to award a contract opportunity under the program to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days after that date the Administrator may file a written request for reconsideration of the contracting officer's decision with the head of the Federal agency.

1    **§ 25306. Price evaluation preference in full and open com-**  
 2                    **petition**

3           (a) IN GENERAL.—Subject to subsection (b), in a case in which a con-  
 4    tract is to be awarded on the basis of full and open competition, the price  
 5    offered by a qualified HUBZone small business concern shall be deemed to  
 6    be lower than the price offered by another offeror (other than another small  
 7    business concern) if the price offered by the qualified HUBZone small busi-  
 8    ness concern is not more than 10 percent higher than the price offered by  
 9    the otherwise lowest, responsive, and responsible offeror.

10          (b) AGRICULTURAL COMMODITIES.—

11           (1) IN GENERAL.—In the case of a purchase by the Secretary of Ag-  
 12    riculture of agricultural commodities, the price evaluation preference  
 13    shall be—

14                  (A) 10 percent for the portion of a contract to be awarded that  
 15                  is not greater than 25 percent of the total volume being procured  
 16                  for each agricultural commodity in a single invitation;

17                  (B) 5 percent for the portion of a contract to be awarded that  
 18                  is greater than 25 percent, but not greater than 40 percent, of the  
 19                  total volume being procured for each agricultural commodity in a  
 20                  single invitation; and

21                  (C) zero, for the portion of a contract to be awarded that is  
 22                  greater than 40 percent of the total volume being procured for  
 23                  each agricultural commodity in a single invitation.

24           (2) TREATMENT OF PREFERENCE.—A contract awarded to a quali-  
 25    fied HUBZone small business concern under a preference described in  
 26    paragraph (1) shall not be counted toward the fulfillment of any re-  
 27    quirement partially set aside for competition restricted to small busi-  
 28    ness concerns.

29           (3) INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price  
 30    evaluation preference for a purchase of an agricultural commodity by  
 31    the Secretary of Agriculture for export operations through an inter-  
 32    national food aid program administered by the Farm Service Agency  
 33    shall be 5 percent on the first portion of a contract to be awarded that  
 34    is not greater than 20 percent of the total volume of each agricultural  
 35    commodity being procured in a single invitation.

36    **§ 25307. Relationship to other contracting preferences**

37           A procurement may not be made from a source on the basis of a pref-  
 38    erence under the program if the procurement would otherwise be made from  
 39    a different source under—

40                  (1) section 4124 or 4125 of title 18; or

41                  (2) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

1 **§ 25308. Verification of eligibility**

2 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall  
3 establish procedures relating to—

4 (1) the filing, investigation, and disposition by the Administrator of  
5 any challenge to the eligibility of a small business concern to receive  
6 assistance under the program (including a challenge, filed by an inter-  
7 ested party, relating to the veracity of a certification made or informa-  
8 tion provided to the Administrator by a small business concern under  
9 section 25301(7) of this title); and

10 (2) verification by the Administrator of the accuracy of any certifi-  
11 cation made or information provided to the Administration by a small  
12 business concern under section 25301(7) of this title.

13 (b) EXAMINATIONS.—The procedures established under subsection (a)  
14 may provide for program examinations (including random program examina-  
15 tions) by the Administrator of any small business concern making a certifi-  
16 cation or providing information to the Administrator under section 25301(7)  
17 of this title.

18 (c) PROVISION OF DATA.—On the request of the Administrator, the Sec-  
19 retary of Labor, the Secretary of Housing and Urban Development, and the  
20 Secretary of the Interior (or the Assistant Secretary for Indian Affairs)  
21 shall promptly provide to the Administrator such information as the Admin-  
22 istrator determines to be necessary to carry out this section.

23 **§ 25309. Regulations**

24 (a) CERTIFICATION PROCEDURES.—The Administrator shall by regula-  
25 tion establish procedures for the certification of a small business concern  
26 as a qualified HUBZone small business concern.

27 (b) CONSTRUCTION CONTRACTS AND OTHER CONTRACTS.—The Adminis-  
28 trator shall by regulation establish requirements that are similar to the re-  
29 quirements specified in items (aa) and (bb) of section 25301(7)(A)(i)(III)  
30 of this title on contracts for general and specialty construction and contracts  
31 for any other industry category that would not otherwise be subject to those  
32 requirements. The percentage applicable to any such requirement shall be  
33 determined in accordance with section 25301(7)(B) of this title.

34 **§ 25310. List of qualified HUBZone small business concerns**

35 The Administrator shall establish and maintain a list of qualified  
36 HUBZone small business concerns, which list, to the extent practicable—

37 (1) after the Administrator makes the certification required by sec-  
38 tion 25301(7)(A)(i) of this title regarding a qualified HUBZone small  
39 business concern and determines that subparagraph section  
40 25301(7)(A)(ii) of this title does not apply to that qualified HUBZone

1 small business concern, shall include the name, address, and type of  
2 business with respect to each such small business concern;

3 (2) shall be updated by the Administrator not less than annually;  
4 and

5 (3) on request, shall be provided to any Federal agency or other enti-  
6 ty.

7 **§ 25311. Penalties**

8 In addition to the penalties described in section 10504 of this title, a  
9 small business concern that is determined by the Administrator to have mis-  
10 represented the status of that small business concern as a HUBZone small  
11 business concern for purposes of this section shall be subject to—

12 (1) section 1001 of title 18; and

13 (2) sections 3729 to 3733 of title 31.

14 **CHAPTER 255—SMALL BUSINESS CONCERNS OWNED**  
15 **AND CONTROLLED BY SERVICE-DISABLED VETERANS**

Sec.

25501. Sole source contracts.

25502. Restricted competition.

25503. Relationship to other contracting preferences.

25504. Provision of data.

25505. Verification of eligibility.

25506. Penalties.

16 **§ 25501. Sole source contracts**

17 A contracting officer may award a sole source contract to any small busi-  
18 ness concern owned and controlled by service-disabled veterans if—

19 (1) the Administrator determines that the small business concern  
20 owned and controlled by service-disabled veterans is a responsible con-  
21 tractor with respect to performance of the contract opportunity;

22 (2) the contracting officer does not have a reasonable expectation  
23 that 2 or more small business concerns owned and controlled by serv-  
24 ice-disabled veterans will submit offers for the contracting opportunity;

25 (3) the anticipated award price of the contract (including options)  
26 will not exceed—

27 (A) \$5,000,000, in the case of a contract opportunity assigned  
28 a North American Industry Classification System code for manu-  
29 facturing; or

30 (B) \$3,000,000, in the case of any other contract opportunity;  
31 and

32 (4) in the estimation of the contracting officer, the contract award  
33 can be made at a fair and reasonable price.

34 **§ 25502. Restricted competition**

35 A contracting officer may award a contract on the basis of competition  
36 restricted to small business concerns owned and controlled by service-dis-  
37 abled veterans if the contracting officer has a reasonable expectation that—

- 1 (1) not fewer than 2 small business concerns owned and controlled  
 2 by service-disabled veterans will submit offers; and  
 3 (2) the award can be made at a fair market price.

4 **§ 25503. Relationship to other contracting preferences**

5 A procurement may not be made from a source on the basis of a pref-  
 6 erence provided under section 25501 or 25502 of this title if the procure-  
 7 ment would otherwise be made from a different source under—

- 8 (1) section 4124 or 4125 of title 18; or  
 9 (2) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

10 **§ 25504. Provision of data**

11 On the request of the Administrator, the head of any Federal agency  
 12 shall promptly provide to the Administrator such information as the Admin-  
 13 istrator determines to be necessary to carry out this chapter.

14 **§ 25505. Verification of eligibility**

15 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall  
 16 establish procedures relating to—

17 (1) the filing, investigation, and disposition by the Administrator of  
 18 any challenge to the eligibility of a small business concern to receive  
 19 assistance under this subsection (including a challenge, filed by an in-  
 20 terested party, relating to the veracity of a certification made or infor-  
 21 mation provided to the Administration by a small business concern);  
 22 and

23 (2) verification by the Administrator of the accuracy of any certifi-  
 24 cation made or information provided to the Administration by a small  
 25 business concern.

26 (b) EXAMINATIONS.—The procedures established under subsection (a)  
 27 may provide for program examinations (including random program examina-  
 28 tions) by the Administrator of any small business concern making a certifi-  
 29 cation or providing information to the Administrator.

30 **§ 25506. Penalties**

31 In addition to the penalties described in section 10504 of this title, a  
 32 small business concern that is determined by the Administrator to have mis-  
 33 represented the status of the small business concern as a small business  
 34 concern owned and controlled by service-disabled veterans for purposes of  
 35 this chapter shall be subject to—

- 36 (1) section 1001 of title 18; and  
 37 (2) sections 3729 to 3733 of title 31.

38 **CHAPTER 257—SMALL BUSINESS CONCERNS OWNED**  
 39 **AND CONTROLLED BY WOMEN**

Sec.

25701. Definition of small business concern owned and controlled by women.

25702. Restricted competition.

25703. Identification of industries.

25704. Provision of data.

25705. Verification of eligibility.

25706. Penalties.

1     **§ 25701. Definition of small business concern owned and**  
 2                     **controlled by women**

3             In this chapter, the term “small business concern owned and controlled  
 4     by women” has the meaning given the term in section 10101 of this title,  
 5     except that ownership shall be determined without regard to any community  
 6     property law.

7     **§ 25702. Restricted competition**

8             (a) IN GENERAL.—A contracting officer may restrict competition for any  
 9     contract for the procurement of a good or service by the Federal Govern-  
 10    ment to small business concerns owned and controlled by women if—

11            (1) each of the small business concerns owned and controlled by  
 12            women is not less than 51 percent owned by one or more women who  
 13            are economically disadvantaged (for which purpose ownership shall be  
 14            determined without regard to any community property law);

15            (2) the contracting officer has a reasonable expectation that 2 or  
 16            more small business concerns owned and controlled by economically dis-  
 17            advantaged women will submit offers for the contract;

18            (3) the contract is for the procurement of a good or service with re-  
 19            spect to an industry identified by the Administrator under section  
 20            25703 of this title;

21            (4) the anticipated award price of the contract (including options)  
 22            does not exceed—

23            (A) \$5,000,000, in the case of a contract assigned a North  
 24            American Industry Classification System code for manufacturing;  
 25            or

26            (B) \$3,000,000, in the case of any other contract;

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

29            (6) each of the small business concerns owned and controlled by  
 30            women—

31            (A) is certified by a Federal agency, a State government, or a  
 32            national certifying entity approved by the Administrator, as a  
 33            small business concern owned and controlled by women; or

34            (B)(i) certifies to the contracting officer that it is a small busi-  
 35            ness concern owned and controlled by women; and

36            (ii) provides adequate documentation, in accordance with stand-  
 37            ards established by the Administrator, to support the certification.

38            (b) WAIVER.—The Administrator may waive subsection (a)(1) with re-  
 39     spect to a small business concern owned and controlled by women if the Ad-



1 administrator determines that the small business concern owned and controlled  
 2 by women is in an industry in which small business concerns owned and  
 3 controlled by women are substantially underrepresented.

4 **§ 25703. Identification of industries**

5 The Administrator shall conduct a study to identify industries in which  
 6 small business concerns owned and controlled by women are underrep-  
 7 resented with respect to Federal procurement contracting.

8 **§ 25704. Provision of data**

9 On the request of the Administrator, the head of a Federal agency shall  
 10 promptly provide to the Administrator such information as the Adminis-  
 11 trator determines to be necessary to carry out this chapter.

12 **§ 25705. Verification of eligibility**

13 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall  
 14 establish procedures relating to—

15 (1) the filing, investigation, and disposition by the Administrator of  
 16 any challenge to the eligibility of a small business concern to receive  
 17 assistance under this chapter (including a challenge, filed by an inter-  
 18 ested party, relating to the veracity of a certification made or informa-  
 19 tion provided to the Administrator by a small business concern under  
 20 section 25702(a)(6) of this title); and

21 (2) verification by the Administrator of the accuracy of any certifi-  
 22 cation made or information provided to the Administrator by a small  
 23 business concern under section 25702(a)(6) of this title.

24 (b) EXAMINATIONS.—The procedures established under subsection (a)  
 25 may provide for program examinations (including random program examina-  
 26 tions) by the Administrator of any small business concern making a certifi-  
 27 cation or providing information to the Administrator under section  
 28 25702(a)(6) of this title.

29 **§ 25706. Penalties**

30 In addition to the penalties described in section 10504 of this title, a  
 31 small business concern that is determined by the Administrator to have mis-  
 32 represented the status of the small business concern as a small business  
 33 concern owned and controlled by women for purposes of this chapter shall  
 34 be subject to—

35 (1) section 1001 of title 18; and

36 (2) sections 3729 to 3733 of title 31.

37 **DIVISION H—RESEARCH AND DEVELOPMENT**

38 **CHAPTER 261—GENERAL PROVISIONS**

Sec.

26101. Definitions.

26102. Assistance to small business concerns.

26103. Federal agency cooperation.

26104. Joint research and development programs.

1 **§ 26101. Definitions**

2 In this division:

3 (1) **COMMERCIAL APPLICATION.**—The term “commercial application”  
4 includes testing and evaluation of products, services, or technologies for  
5 use in technical or weapons systems.

6 (2) **COOPERATIVE RESEARCH AND DEVELOPMENT.**—The term “coop-  
7 erative research and development” means research or research and de-  
8 velopment conducted jointly by a small business concern and a research  
9 institution in which not less than 40 percent of the work is performed  
10 by the small business concern and not less than 30 percent of the work  
11 is performed by the research institution.

12 (3) **EXTRAMURAL BUDGET.**—

13 (A) **IN GENERAL.**—The term “extramural budget”, in reference  
14 to the extramural budget of a Federal agency, means the sum of  
15 the total obligations minus amounts obligated for research or re-  
16 search and development by employees of the Federal agency in or  
17 through Government-owned, Government-operated facilities.

18 (B) **APPLICABILITY TO DEPARTMENT OF ENERGY.**—As applied  
19 with respect to the Department of Energy, the term “extramural  
20 budget” does not include amounts obligated for atomic energy de-  
21 fense programs solely for weapons activities or for naval reactor  
22 programs.

23 (C) **APPLICABILITY TO AGENCY FOR INTERNATIONAL DEVELOP-**  
24 **MENT.**—As applied to the Agency for International Development,  
25 the term “extramural budget” does not include amounts obligated  
26 solely for general institutional support of international research  
27 centers or for grants to foreign countries.

28 (4) **FEDERAL AGENCY.**—

29 (A) **IN GENERAL.**—The term “Federal agency” means—

- 30 (i) an executive agency (as defined in section 105 of title  
31 5); or  
32 (ii) a military department.

33 (B) **EXCLUSION.**—The term “Federal agency” does not include  
34 an agency within the Intelligence Community (as defined in sec-  
35 tion 3.4(f) of Executive Order 12333 (50 U.S.C. 401 note) (or any  
36 successor Executive order)).

37 (5) **FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.**—

38 The term “Federally funded research and development center” means  
39 a federally funded research and development center identified by the  
40 National Scientific Foundation in accordance with the Governmentwide  
41 Federal Acquisition Regulation issued under section 25(e)(1) of the Of-

1        office of Federal Procurement Policy Act (41 U.S.C. 421(e)(1)) (or any  
2        successor regulation).

3        (6) FIRST PHASE.—The term “first phase”—

4            (A) with respect to an SBIR, means the phase described in  
5            paragraph (13)(A); and

6            (B) with respect to an STTR, means the phase described in  
7            paragraph (14)(A).

8        (7) FUNDING AGREEMENT.—The term “funding agreement” means  
9        a contract, grant, or cooperative agreement entered into between a  
10        Federal agency and a small business concern for the performance of  
11        experimental, developmental, or research work funded in whole or in  
12        part by the Federal Government.

13        (8) RESEARCH INSTITUTION.—

14            (A) IN GENERAL.—The term “research institution” means a  
15            nonprofit institution (as defined in section 4 of the Stevenson-  
16            Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

17            (B) INCLUSION.—The term “research institution” includes a  
18            federally funded research and development center.

19        (9) RESEARCH OR RESEARCH AND DEVELOPMENT.—The term “re-  
20        search or research and development” means an activity that is—

21            (A) a systematic, intensive study directed toward greater knowl-  
22            edge or understanding of the subject studied;

23            (B) a systematic study directed specifically toward applying new  
24            knowledge to meet a recognized need; or

25            (C) a systematic application of knowledge toward the production  
26            of useful materials, devices, and systems or methods, including de-  
27            sign, development, and improvement of prototypes and new pro-  
28            cesses to meet specific requirements.

29        (10) SBIR.—The term “SBIR” means a small business innovation  
30        research program.

31        (11) SBIR AGENCY.—The term “SBIR agency” means a Federal  
32        agency that is required by section 26301 of this title to have an SBIR.

33        (12) SECOND PHASE.—The term “second phase”—

34            (A) with respect to an SBIR, means the phase described in  
35            paragraph (13)(B); and

36            (B) with respect to an STTR, means the phase described in  
37            paragraph (14)(B).

38        (13) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term  
39        “small business innovation research program” means a program under  
40        which a portion of a Federal agency’s research or research and develop-

1 ment effort is reserved for award to small business concerns through  
2 a uniform process having—

3 (A) a first phase for determining, insofar as possible, the sci-  
4 entific and technical merit and feasibility of ideas that appear to  
5 have commercial potential, as described in subparagraph (B), sub-  
6 mitted pursuant to SBIR solicitations;

7 (B) a second phase, to further develop proposals that meet par-  
8 ticular program needs, in which awards shall be made based on  
9 the scientific and technical merit and feasibility of the proposals,  
10 as evidenced by the first phase, considering, among other things,  
11 the proposal's commercial potential, as evidenced by—

12 (i) the small business concern's record of successfully com-  
13 mercializing SBIR or other research;

14 (ii) the existence of second phase funding commitments  
15 from private sector or non-SBIR funding sources;

16 (iii) the existence of third phase, follow-on commitments for  
17 the subject of the research; and

18 (iv) the presence of other indicators of the commercial po-  
19 tential of the idea; and

20 (C) where appropriate, a third phase—

21 (i) in which commercial applications of SBIR-funded re-  
22 search or research and development are funded—

23 (I) by non-Federal sources of capital; or

24 (II) for products or services intended for use by the  
25 Federal Government, by follow-on non-SBIR Federal  
26 funding awards; or

27 (ii) for which awards from non-SBIR Federal funding  
28 sources are used for the continuation of research or research  
29 and development that has been competitively selected using  
30 peer review or scientific review criteria.

31 (14) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The  
32 term “small business technology transfer program” means a program  
33 under which a portion of a Federal agency's extramural research or re-  
34 search and development effort is reserved for award to small business  
35 concerns for cooperative research and development through a uniform  
36 process having—

37 (A) a first phase, to determine, to the extent possible, the sci-  
38 entific, technical, and commercial merit and feasibility of ideas  
39 submitted pursuant to STTR solicitations;

40 (B) a second phase, to further develop proposed ideas to meet  
41 particular program needs, in which awards shall be made based on

1 the scientific, technical, and commercial merit and feasibility of  
 2 the idea, as evidenced by the first phase and by other relevant in-  
 3 formation; and

4 (C) where appropriate, a third phase—

5 (i) in which commercial applications of STTR-funded re-  
 6 search or research and development are funded—

7 (I) by non-Federal sources of capital; or

8 (II) for products or services intended for use by the  
 9 Federal Government, by follow-on non-STTR Federal  
 10 funding awards; and

11 (ii) for which awards from non-STTR Federal funding  
 12 sources are used for the continuation of research or research  
 13 and development that has been competitively selected using  
 14 peer review or scientific review criteria.

15 (15) STTR.—The term “STTR” means a small business technology  
 16 transfer program.

17 (16) STTR AGENCY.—The term “STTR agency” means a Federal  
 18 agency that is required by section 26321 of this title to have an STTR.

19 (17) THIRD PHASE.—The term “third phase”—

20 (A) with respect to an SBIR, means the phase described in  
 21 paragraph (13)(C); and

22 (B) with respect to an STTR, means the phase described in  
 23 paragraph (14)(C).

24 (18) THIRD PHASE AGREEMENT.—The term “third phase agree-  
 25 ment” means a follow-on, non-SBIR-funded contract or non-STTR-  
 26 funded contract described in paragraph (13)(C) or (14)(C).

27 **§ 26102. Assistance to small business concerns**

28 The Administrator shall—

29 (1) assist small business concerns in obtaining Government contracts  
 30 for research and development;

31 (2) assist small business concerns in obtaining the benefits of re-  
 32 search and development performed under Government contracts or at  
 33 Government expense;

34 (3) provide technical assistance to small business concerns to accom-  
 35 plish the purposes of this division;

36 (4) develop and maintain a source file and an information program  
 37 to assure each qualified and interested small business concern the op-  
 38 portunity to participate in Federal agency SBIRs and STTRs;

39 (5) coordinate with participating Federal agencies a schedule for re-  
 40 lease of SBIR and STTR solicitations, and prepare a master release

1 schedule so as to maximize the opportunity of small business concerns  
2 to respond to solicitations;

3 (6) independently survey and monitor the operation of SBIRs and  
4 STTRs within participating Federal agencies; and

5 (7) provide for and fully implement the tenets of Executive Order  
6 No. 13329 (Encouraging Innovation in Manufacturing).

7 **§ 26103. Federal agency cooperation**

8 The Administrator may consult and cooperate with, and make studies and  
9 recommendations to, all Federal agencies and the Government Account-  
10 ability Office, and a Federal agency or the Government Accountability Of-  
11 fice shall cooperate with the Administrator in order to carry out and to ac-  
12 complish the purposes of this division.

13 **§ 26104. Joint research and development programs**

14 (a) IN GENERAL.—The Administrator may consult with representatives  
15 of small business concerns with a view to assisting and encouraging small  
16 business concerns in undertaking joint programs for research and develop-  
17 ment carried out through such corporate or other mechanism as may be  
18 most appropriate for the purpose.

19 (b) PURPOSES.—A joint program under subsection (a) may, among other  
20 things, include the purposes of—

21 (1) constructing, acquiring, or establishing a laboratory or other fa-  
22 cility for the conduct of research;

23 (2) undertaking and utilizing applied research;

24 (3) collecting research information related to a particular industry  
25 and disseminating the information to participating members;

26 (4) conducting applied research on a protected, proprietary, and con-  
27 tractual basis with member or nonmember concerns, Government agen-  
28 cies, and others;

29 (5) prosecuting applications for patents and rendering patent serv-  
30 ices for participating members; and

31 (6) negotiating and granting licenses under patents held under the  
32 joint program and establishing corporations designed to exploit par-  
33 ticular patents obtained by the joint venture.

34 (c) APPROVAL OF AGREEMENTS.—After consultation with the Attorney  
35 General and the Chairman of the Federal Trade Commission, and with the  
36 prior written approval of the Attorney General, the Administrator may ap-  
37 prove an agreement between small business concerns providing for a joint  
38 program of research and development if the Administrator determines that  
39 the joint program proposed will maintain and strengthen the free enterprise  
40 system and the economy of the Nation.

1 (d) WITHDRAWAL OF APPROVAL.—The Administrator or the Attorney  
 2 General may at any time withdraw approval of the agreement and the joint  
 3 program of research and development covered by the agreement if the Ad-  
 4 ministrator or Attorney General determines that the agreement or the joint  
 5 program is no longer in the best interests of the competitive free enterprise  
 6 system and the economy of the Nation.

7 (e) PUBLICATION IN FEDERAL REGISTER.—A copy of an approval or dis-  
 8 approval and of any determination made under subsection (e) or (d) shall  
 9 be published in the Federal Register.

10 (f) NONDELEGABILITY.—The authority of the Administrator under this  
 11 section may not be delegated.

12 (g) NO VIOLATION OF ANTITRUST LAWS OR FEDERAL TRADE COMMIS-  
 13 SION ACT.—

14 (1) IN GENERAL.—Subject to paragraph (2), no act or omission to  
 15 act pursuant to and within the scope of a joint program for research  
 16 and development under an agreement approved by the Administrator  
 17 under this section shall be within the prohibitions of the antitrust laws  
 18 or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

19 (2) WITHDRAWAL OF APPROVAL.—On publication in the Federal  
 20 Register of the notice of withdrawal of approval of an agreement grant-  
 21 ed under this section, by the Administrator or by the Attorney General,  
 22 this section shall not apply to any subsequent act or omission to act  
 23 by reason of the agreement or the approval.

## 24 **CHAPTER 263—SBIRs AND STTRs**

### **Subchapter I—SBIRs**

Sec.

- 26301. Federal agency SBIRs.
- 26302. Administration of SBIRs by Federal agencies.
- 26303. Funding agreement goals.
- 26304. SBIR policy directives.
- 26305. Discretionary technical assistance.
- 26306. Coordination of technology development programs.
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### **Subchapter III—Provisions Relating to Both SBIRs and STTRs**

- 26341. Database.
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 26347. Innovation in energy efficiency

### 1 **Subchapter I—SBIRs**

#### 2 **§ 26301. Federal agency SBIRs**

3 (a) SBIR BUDGET.—A Federal agency that has an extramural budget for  
 4 research or research and development in excess of \$100,000,000 for any fis-  
 5 cal year shall expend with small business concerns not less than 2.5 percent  
 6 of the extramural budget specifically in connection with an SBIR that meets  
 7 the requirements of this division (including policy directives under section  
 8 26304 of this title).

9 (b) LIMITATIONS.—An SBIR agency shall not—

10 (1) use any of its SBIR budget established under subsection (a) for  
 11 the purpose of funding administrative costs of the program, including  
 12 costs associated with salaries and expenses; or

13 (2) make available for the purpose of meeting the requirements of  
 14 subsection (a) an amount of its extramural budget for basic research  
 15 that exceeds the percentage specified in subsection (a).

16 (c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agree-  
 17 ment with a small business concern for research or research and develop-  
 18 ment that results from a competitive or single source selection other than  
 19 an SBIR shall not be considered to meet any portion of the percentage re-  
 20 quirement of subsection (a).

#### 21 **§ 26302. Administration of SBIRs by Federal agencies**

22 (a) IN GENERAL.—An SBIR agency shall, in accordance with this divi-  
 23 sion (including policy directives under section 26304 of this title)—

24 (1) unilaterally determine categories of projects to be in its SBIR;

25 (2) issue SBIR solicitations in accordance with a schedule deter-  
 26 mined cooperatively with the Administrator;

27 (3) unilaterally determine research topics within the SBIR agency's  
 28 SBIR solicitations, giving special consideration to broad research topics  
 29 and to topics that further one or more critical technologies, as identi-  
 30 fied by—

31 (A) the National Critical Technologies Panel in the reports re-  
 32 quired under section 603 of the National Science and Technology  
 33 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)  
 34 (as in effect before January 1, 2001); or

35 (B) the Secretary of Defense, in the reports required under sec-  
 36 tion 2522 of title 10 (as in effect before February 10, 1996);

37 (4) unilaterally receive and evaluate proposals resulting from SBIR  
 38 proposals;

39 (5) subject to section 26310(b) of this title—



1 (A) unilaterally select awardees for its SBIR funding agree-  
2 ments; and

3 (B) inform each awardee under a funding agreement, to the ex-  
4 tent possible, of the expenses of the awardee that will be allowable  
5 under the funding agreement;

6 (6) administer its own SBIR funding agreements (or delegate such  
7 administration to another Federal agency);

8 (7)(A) make payments to recipients of SBIR funding agreements on  
9 the basis of progress toward or completion of the funding agreement  
10 requirements; and

11 (B) in all cases, make payment to recipients under such agreements  
12 in full, subject to audit, on or before the last day of the 12-month pe-  
13 riod beginning on the date of completion of the funding agreement re-  
14 quirements;

15 (8)(A) include a section on its SBIR in its annual performance plan  
16 required by subsections (a) and (b) of section 1115 of title 31; and

17 (B) submit that section to the Committee on Small Business and  
18 Entrepreneurship of the Senate and the Committee on Science and  
19 Committee on Small Business of the House of Representatives;

20 (9) collect, and maintain in a common format in accordance with  
21 section 26344 of this title, such information from awardees as is nec-  
22 essary to assess the SBIR, including information necessary to maintain  
23 the database under section 26341 of this title; and

24 (10) provide for and fully implement the tenets of Executive Order  
25 No. 13329 (Encouraging Innovation in Manufacturing).

26 (b) RESEARCH AND DEVELOPMENT FOCUS.—

27 (1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF  
28 IDENTIFICATION.—In carrying out subsection (a), the Secretary of De-  
29 fense shall, not less often than once every 4 years, revise and update  
30 the criteria and procedures used to identify areas of the research and  
31 development efforts of the Department of Defense that are suitable for  
32 the provision of funds under the SBIR and the STTR of the Depart-  
33 ment of Defense.

34 (2) USE OF PLANS.—The criteria and procedures described in para-  
35 graph (1) shall be developed through the use of the most current  
36 versions of the following plans:

37 (A) The Joint Warfighting Science and Technology Plan re-  
38 quired under section 270 of the National Defense Authorization  
39 Act for Fiscal Year 1997 (10 U.S.C. 2501 note; Public Law 104-  
40 201).

1 (B) The Defense Technology Area Plan of the Department of  
2 Defense.

3 (C) The Basic Research Plan of the Department of Defense.

4 (3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria  
5 and procedures described in paragraph (1) shall include input in the  
6 identification of areas of research and development efforts described in  
7 that paragraph from Department of Defense program managers and  
8 program executive officers.

9 **§ 26303. Funding agreement goals**

10 (a) IN GENERAL.—A Federal agency that has a budget for research or  
11 research and development in excess of \$20,000,000 for any fiscal year shall  
12 establish goals specifically for funding agreements for research or research  
13 and development to small business concerns.

14 (b) NO BACKSLIDING.—No goal established by a Federal agency under  
15 subsection (a) shall be less than the percentage of the Federal agency's re-  
16 search or research and development budget expended under funding agree-  
17 ments with small business concerns in the immediately preceding fiscal year.

18 **§ 26304. SBIR policy directives**

19 (a) IN GENERAL.—The Administrator, after consultation with the Admin-  
20 istrator of the Office of Federal Procurement Policy, the Director of the Of-  
21 fice of Science and Technology Policy, and the Intergovernmental Affairs  
22 Division of the Office of Management and Budget, shall issue policy direc-  
23 tives for the general conduct of the SBIRs within the Federal Government.

24 (b) MATTERS TO BE PROVIDED FOR.—Policy directives under subsection  
25 (a) shall provide for—

- 26 (1) simplified, standardized, and timely SBIR solicitations;  
27 (2) a simplified, standardized funding process that provides for—  
28 (A) the timely receipt and review of proposals;  
29 (B) outside peer review for at least phase two proposals, if ap-  
30 propriate;  
31 (C) protection of proprietary information provided in proposals;  
32 (D) selection of awardees;  
33 (E) retention by a small business concern of the rights to data  
34 generated by the small business concern in the performance of an  
35 SBIR award for a period of not less than 4 years;  
36 (F) transfer of title to property provided by a Federal agency  
37 to a small business concern if such a transfer would be more cost  
38 effective than recovery of the property by the Federal agency;  
39 (G) cost sharing; and  
40 (H) cost principles and payment schedules;

1 (3) exemptions from the policy directives under paragraph (2) if na-  
2 tional security or intelligence functions clearly would be jeopardized;

3 (4) minimizing the regulatory burden associated with participation in  
4 an SBIR for a small business concern so as to stimulate the cost-effec-  
5 tive conduct of Federal research and development and the likelihood of  
6 commercialization of the results of research and development conducted  
7 under the SBIR;

8 (5) the submission by a Federal agency to the Administrator and the  
9 Office of Science and Technology Policy of a simplified, standardized,  
10 and timely annual report on its SBIR;

11 (6) standardized and orderly withdrawal from SBIR participation by  
12 a Federal agency;

13 (7) the voluntary participation in an SBIR by a Federal agency not  
14 required by section 26301 of this title to have an SBIR;

15 (8) continued use by a small business concern participating in the  
16 third phase of an SBIR, as a directed bailment, of any property trans-  
17 ferred by a Federal agency to the small business concern in the second  
18 phase of an SBIR for a period of not less than 2 years, beginning on  
19 the initial date of the small business concern's participation in the third  
20 phase of an SBIR;

21 (9) procedures to ensure, to the extent practicable, that a Federal  
22 agency that intends to pursue research, development, or production of  
23 a technology developed by a small business concern under an SBIR en-  
24 ters into a follow-on, non-SBIR funding agreement with the small busi-  
25 ness concern for the research, development, or production;

26 (10) limits in the amounts of funds that a Federal agency may  
27 award of \$100,000 in the first phase of an SBIR and \$750,000 in the  
28 second phase of an SBIR, adjusted once every 5 years to reflect eco-  
29 nomic adjustments and programmatic considerations;

30 (11) a process for notifying SBIR agencies and potential SBIR par-  
31 ticipants of the critical technologies, as identified—

32 (A) by the National Critical Technologies Panel in accordance  
33 with section 603 of the National Science and Technology Policy,  
34 Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in  
35 effect before January 1, 2001); or

36 (B) by the Secretary of Defense in accordance with section  
37 2522 of title 10 (as in effect before February 10, 1996);

38 (12)(A) enhanced outreach efforts to increase the participation of  
39 small business concerns owned and controlled by socially and economi-  
40 cally disadvantaged individuals and the participation of small business

1 concerns owned and controlled by women in technological innovation  
2 and in SBIRs, including the third phase of SBIRs; and

3 (B) the collection of data to document that participation;

4 (13) technical and programmatic guidance to encourage Federal  
5 agencies to develop gap-funding programs to address the delay between  
6 an award for the first phase of an SBIR and the application for and  
7 extension of an award for the second phase of the SBIR;

8 (14) procedures to ensure that a small business concern that submits  
9 a proposal for a funding agreement for the first phase of an SBIR and  
10 that has received more than 15 second phase SBIR awards during the  
11 preceding 5 fiscal years is able to demonstrate the extent to which the  
12 small business concern was able to secure third phase funding to de-  
13 velop concepts resulting from previous second phase SBIR awards;

14 (15) the requirement of a succinct commercialization plan with each  
15 application for a second phase SBIR award that is moving toward com-  
16 mercialization;

17 (16) a requirement that a Federal agency report to the Adminis-  
18 trator, not less frequently than annually, all instances in which the  
19 Federal agency pursued research, development, or production of a tech-  
20 nology developed by a small business concern using an award made  
21 under the SBIR of the Federal agency and determined that it was not  
22 practicable to enter into a follow-on non-SBIR funding agreement with  
23 the small business concern; and

24 (17) implementation of section 26344 of this title, including estab-  
25 lishing standardized procedures for the provision of information under  
26 section 26341(c) of this title.

27 (c) PHASED WITHDRAWAL FROM SBIR PROGRAM.—At the discretion of  
28 the Administrator, the policy directive under subsection (b)(6) may require  
29 a phased withdrawal over a period of time sufficient in duration to minimize  
30 any adverse impact on small business concerns.

31 (d) RIGHTS TO DATA.—The rights provided for under subsection  
32 (b)(1)(E) shall apply to all Federal funding awards under this division, in-  
33 cluding first phase, second phase, and third phase awards.

34 (e) REPORTS ON IMPRACTICABILITY OF FOLLOW-ON AGREEMENTS.—A  
35 report under subsection (b)(16) shall include, at a minimum—

36 (1) the reasons why the follow-on funding agreement with the small  
37 business concern was not practicable;

38 (2) the identity of the entity with which the Federal agency con-  
39 tracted to perform the research, development, or production; and

40 (3) a description of the type of funding agreement under which the  
41 research, development, or production was obtained.

**§ 26305. Discretionary technical assistance**

(a) IN GENERAL.—An SBIR agency may enter into an agreement with a vendor selected under subsection (b) to provide small business concerns engaged in SBIR projects with technical assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through on-line data bases, for the purpose of assisting the small business concerns in—

(1) making better technical decisions concerning the projects;

(2) solving technical problems that arise during the conduct of the projects;

(3) minimizing technical risks associated with the projects; and

(4) developing and commercializing new commercial products and processes resulting from the projects.

(b) VENDOR SELECTION.—

(1) IN GENERAL.—An SBIR agency may select a vendor to assist small business concerns in meeting the goals listed in subsection (a) for a term not to exceed 3 years.

(2) COMPETITION.—Selection of a vendor shall be competitive and shall use merit-based criteria.

(c) ADDITIONAL TECHNICAL ASSISTANCE.—

(1) FIRST PHASE.—An SBIR agency may provide services described in subsection (a) to first phase SBIR award recipients in an amount equal to not more than \$4,000, which shall be in addition to the amount of the recipient's award.

(2) SECOND PHASE.—An SBIR agency described in subsection (a) may authorize any second phase SBIR award recipient to purchase, with funds available from its SBIR awards, services described in subsection (a), in an amount equal to not more than \$4,000 per year.

**§ 26306. Coordination of technology development programs**

(a) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this section, the term “technology development program” means—

(1) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

(2) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(3) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

1 (4) the Experimental Program to Stimulate Competitive Research of  
2 the Environmental Protection Agency;

3 (5) the Experimental Program to Stimulate Competitive Research of  
4 the National Aeronautics and Space Administration;

5 (6) the Institutional Development Award Program of the National  
6 Institutes of Health; and

7 (7) the National Research Initiative Competitive Grants Program of  
8 the Department of Agriculture.

9 (b) COORDINATION REQUIREMENTS.—A Federal agency that is subject to  
10 section 26301 of this title and that has established a technology develop-  
11 ment program may, in each fiscal year, review for funding under the tech-  
12 nology development program—

13 (1) a proposal to provide outreach and assistance to one or more  
14 small business concerns interested in participating in the Federal agen-  
15 cy's SBIR (including a proposal to make a grant or loan to a business  
16 concern to pay a portion or all of the cost of developing an SBIR pro-  
17 posal) from an entity, organization, or individual located in—

18 (A) a State that is eligible to participate in the technology devel-  
19 opment program; or

20 (B) a State described in subsection (c); or

21 (2) a proposal for the first phase of the SBIR program (if the pro-  
22 posal, though meritorious, is not funded through the SBIR program for  
23 that fiscal year due to funding restraints) from a small business con-  
24 cern located in—

25 (A) a State that is eligible to participate in the technology devel-  
26 opment program; or

27 (B) a State described in subsection (c).

28 (c) ADDITIONALLY ELIGIBLE STATE.—A State referred to in paragraph  
29 (1)(B) or (2)(B) of subsection (b) is a State in which the total value of con-  
30 tracts awarded to small business concerns under all SBIRs is less than the  
31 total value of contracts awarded to small business concerns in a majority  
32 of other States, as determined by the Administrator in even-numbered fiscal  
33 years, based on the most recent statistics compiled by the Administrator.

34 **§ 26307. Purchase of American-made equipment and prod-**  
35 **ucts**

36 (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is  
37 the sense of Congress that an entity that is awarded a funding agreement  
38 under the SBIR of a Federal agency should, when purchasing any equip-  
39 ment or a product with funds provided through the funding agreement, pur-  
40 chase only American-made equipment and products, to the extent possible  
41 in keeping with the overall purposes of the SBIR.

1 (b) NOTICE TO SBIR AWARDEES.—A Federal agency that awards a  
2 funding agreement under an SBIR shall provide to each recipient of such  
3 an award a notice describing the sense of the Congress stated in subsection  
4 (a).

5 **§ 26308. Use of Department of Agriculture extramural bud-**  
6 **get funds**

7 All funds appropriated that are determined to be part of the extramural  
8 budget of the Department of Agriculture for any fiscal year for purposes  
9 of meeting the requirements of this division shall be available for funding  
10 agreements with small business concerns for any purpose in furtherance of  
11 the SBIR of the Department of Agriculture. Such funds may be transferred  
12 for that purpose from one appropriation account to another or to a single  
13 account.

14 **§ 26309. Commercialization pilot program**

15 (a) IN GENERAL.—The Secretary of Defense and each Secretary of a  
16 military department may create and administer a commercialization pilot  
17 program to accelerate the transition of technologies, products, and services  
18 developed under the SBIR of the Department of Defense or of the military  
19 department to the third phase, including the acquisition process.

20 (b) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED  
21 TRANSITION TO ACQUISITION PROCESS.—In carrying out a commercializa-  
22 tion pilot program, the Secretary of Defense and the Secretary of each mili-  
23 tary department shall identify research programs of an SBIR that have the  
24 potential for rapid transitioning to the third phase and into the acquisition  
25 process.

26 (c) LIMITATION.—No research program of a military department may be  
27 identified under subsection (b) unless the Secretary of the military depart-  
28 ment certifies in writing that the successful transition of the research pro-  
29 gram to the third phase and into the acquisition process is expected to meet  
30 high priority military requirements of the military department.

31 (d) FUNDING.—

32 (1) IN GENERAL.—For payment of expenses incurred to administer  
33 the commercialization pilot program under this subsection, the Sec-  
34 retary of Defense and a Secretary of a military department may use  
35 not more than an amount equal to one percent of the funds available  
36 to the Department of Defense or the military department under an  
37 SBIR.

38 (2) USE OF FUNDS.—Funds used as described in paragraph (1)—

39 (A) shall not be subject to the limitations on the use of funds  
40 in section 26301(b) of this title; and

41 (B) shall not be used to make third phase awards.

1 (e) EVALUATIVE REPORT.—

2 (1) IN GENERAL.—At the end of each fiscal year, the Secretary of  
3 Defense shall submit to the Committee on Armed Services and Com-  
4 mittee on Small Business and Entrepreneurship of the Senate and the  
5 Committee on Armed Services and Committee on Small Business of the  
6 House of Representatives an evaluative report regarding activities  
7 under the commercialization pilot program.

8 (2) CONTENTS.—A report under paragraph (1) shall include—

9 (A) an accounting of the funds used in the commercialization  
10 pilot program;

11 (B) a detailed description of the commercialization pilot pro-  
12 gram, including incentives and activities undertaken by acquisition  
13 program managers, program executive officers, and prime contrac-  
14 tors; and

15 (C) a detailed compilation of results achieved by the commer-  
16 cialization pilot program, including the number of small business  
17 concerns assisted and the number of projects commercialized.

18 (f) SUNSET.—A commercialization pilot program under this section shall  
19 terminate at the end of fiscal year 2009.

20 **§ 26310. Reports by Federal agencies**

21 (a) ANNUAL REPORT.—An SBIR agency shall annually submit to the Ad-  
22 ministrator and the Office of Science and Technology Policy a report on the  
23 Federal agency's SBIR.

24 (b) REPORTING OF AWARDS MADE FROM SINGLE PROPOSALS, AWARDS  
25 TO MULTIPLE AWARD WINNERS, AND AWARDS TO CRITICAL TECHNOLOGY  
26 TOPICS.—

27 (1) SINGLE PROPOSAL.—If an SBIR agency makes an award with  
28 respect to an SBIR solicitation topic or subtopic for which the Federal  
29 agency received only one proposal, the SBIR agency shall provide writ-  
30 ten justification for making the award in its next quarterly report to  
31 the Administrator and in the SBIR agency's next annual report re-  
32 quired under subsection (a).

33 (2) MULTIPLE AWARDS.—An SBIR agency shall include in its next  
34 annual report required under subsection (a) an accounting of the  
35 awards that the SBIR agency has made for the first phase of its SBIR  
36 during the reporting period to entities that have received more than 15  
37 awards for the second phase of the SBIR during the preceding 5 fiscal  
38 years.

39 (3) CRITICAL TECHNOLOGY AWARDS.—

40 (A) IN GENERAL.—An SBIR agency shall include in its next an-  
41 nual report required under subsection (a) an accounting of the



1 number of awards that the SBIR agency has made to critical tech-  
2 nology topics described in section 26302(3) of this title.

3 (B) CONTENTS.—An accounting under subparagraph (A)  
4 shall—

5 (i) include an identification of the specific critical tech-  
6 nologies topics; and

7 (ii) disclose the percentage by number and dollar amount  
8 of the SBIR agency's total SBIR awards to critical tech-  
9 nology topics.

10 (c) NUMBER AND DOLLAR AMOUNT OF AWARDS.—

11 (1) IN GENERAL.—A Federal agency required by section 26301 of  
12 this title to have an SBIR or to establish goals shall annually submit  
13 to the Administrator a report that discloses—

14 (A) the number of awards pursuant to grants, contracts, or co-  
15 operative agreements over \$10,000 in amount; and

16 (B) the dollar value of all such awards.

17 (2) CONTENTS.—A report under paragraph (1) shall identify SBIR  
18 awards and compare the number and amount of those awards with  
19 awards to other than small business concerns.

20 (3) CALCULATION OF EXTRAMURAL BUDGET.—

21 (A) METHODOLOGY.—Not later than 4 months after the date  
22 of enactment of each appropriations Act for an SBIR agency, the  
23 SBIR agency shall submit to the Administrator a report that in-  
24 cludes a description of the methodology used for calculating the  
25 amount of the extramural budget of that SBIR agency.

26 (B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall in-  
27 clude an analysis of the methodology received from each SBIR  
28 agency in the report required by section 10710(a) of this title.

29 **§ 26311. Termination**

30 The authorization to carry out an SBIR under this chapter terminates  
31 on September 30, 2008.

32 **Subchapter II—STTRs**

33 **§ 26321. Federal agency STTRs**

34 (a) STTR BUDGET.—With respect to each fiscal year through fiscal year  
35 2009, a Federal agency that has an extramural budget for research or re-  
36 search and development in excess of \$1,000,000,000 for the fiscal year shall  
37 expend with small business concerns not less than 0.3 percent, specifically  
38 in connection with an STTR that meets the requirements of this division  
39 (including any policy directive under section 26323 of this title).

40 (b) LIMITATIONS.—A Federal agency shall not—

1 (1) use any of its STTR budget established under subsection (a) for  
2 the purpose of funding—

3 (A) administrative costs of the STTR program, including costs  
4 associated with salaries and expenses; or

5 (B) in the case of a small business concern or a research insti-  
6 tution, costs associated with salaries, expenses, and administrative  
7 overhead (other than direct or indirect costs allowable under  
8 guidelines of the Office of Management and Budget and the Gov-  
9 ernmentwide Federal Acquisition Regulation issued under section  
10 25(e)(1) of the Office of Federal Procurement Policy Act (41  
11 U.S.C. 421(e)(1))); or

12 (2) make available for the purpose of meeting the requirements of  
13 subsection (a) an amount of its extramural budget for basic research  
14 that exceeds the percentage specified in subsection (a).

15 (c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agree-  
16 ment with a small business concern for research or research and develop-  
17 ment that results from a competitive or single source selection other than  
18 an STTR shall not be considered to meet any portion of the percentage re-  
19 quirement of subsection (a).

20 **§ 26322. Administration of STTRs by Federal agencies**

21 An STTR agency shall—

22 (1) unilaterally determine categories of projects to be included in its  
23 STTR;

24 (2) issue STTR solicitations in accordance with a schedule deter-  
25 mined cooperatively with the Administrator;

26 (3) unilaterally determine research topics within the Federal agency's  
27 STTR solicitations, giving special consideration to broad research top-  
28 ics and to topics that further one or more critical technologies, as iden-  
29 tified by—

30 (A) the National Critical Technologies Panel in the reports re-  
31 quired under section 603 of the National Science and Technology  
32 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)  
33 (as in effect before January 1, 2001); or

34 (B) the Secretary of Defense, in the reports required under sec-  
35 tion 2522 of title 10 (as in effect before February 10, 1996);

36 (4) unilaterally receive and evaluate proposals resulting from STTR  
37 solicitations;

38 (5)(A) unilaterally select awardees for its STTR funding agreements;  
39 and

1 (B) inform each awardee under a funding agreement, to the extent  
2 possible, of the expenses of the awardee that will be allowable under  
3 the funding agreement;

4 (6) administer its own STTR funding agreements (or delegate such  
5 administration to another Federal agency);

6 (7)(A) make payments to recipients of STTR funding agreements on  
7 the basis of progress toward or completion of the funding agreement  
8 requirements; and

9 (B) in all cases, make payment to recipients under funding agree-  
10 ments in full, subject to audit, on or before the last day of the 12-  
11 month period beginning on the date of the completion of the funding  
12 agreement requirements;

13 (8)(A) include as part of its annual performance plan as required by  
14 subsections (a) and (b) of section 1115 of title 31 a section on its  
15 STTR; and

16 (B) submit that section to the Committee on Small Business of the  
17 Senate and the Committee on Science and the Committee on Small  
18 Business of the House of Representatives;

19 (9) collect such information from awardees as is necessary to assess  
20 STTR outputs and outcomes;

21 (10) adopt the agreement developed by the Administrator under sec-  
22 tion 26324 of this title as the STTR agency's model agreement for al-  
23 locating between small business concerns and research institutions—

24 (A) intellectual property rights; and

25 (B) rights, if any, to carry out follow-on research, development,  
26 or commercialization;

27 (11) develop, in consultation with the Office of Federal Procurement  
28 Policy and the Office of Government Ethics, procedures to ensure that  
29 federally funded research and development centers that participate in  
30 STTR agreements—

31 (A) are free from organizational conflicts of interests relative to  
32 the program;

33 (B) do not use privileged information gained through work per-  
34 formed for an STTR agency or private access to STTR agency  
35 personnel in the development of an STTR proposal; and

36 (C) use outside peer review, as appropriate;

37 (12) develop procedures for assessing the commercial merit and fea-  
38 sibility of STTR proposals, as evidenced by—

39 (A) the small business concern's record of successfully commer-  
40 cializing STTR or other research;

1 (B) the existence of second phase funding commitments from  
2 private sector or non-STTR funding sources;

3 (C) the existence of third phase follow-on commitments for the  
4 subject of the research; and

5 (D) the presence of other indicators of the commercial potential  
6 of the idea;

7 (13) implement an outreach program to research institutions and  
8 small business concerns for the purpose of enhancing its STTR, in con-  
9 junction with any such outreach done for purposes of the STTR agen-  
10 cy's SBIR;

11 (14) collect, and maintain in a common format in accordance with  
12 section 26344 of this title, such information from awardees as is nec-  
13 essary to assess its STTR, including information necessary to maintain  
14 the database under section 26341 of this title;

15 (15) annually submit to the Administrator and the Office of Science  
16 and Technology Policy a report on its STTR; and

17 (16) provide for and fully implement the tenets of Executive Order  
18 No. 13329 (Encouraging Innovation in Manufacturing).

19 **§ 26323. STTR policy directive**

20 (a) ISSUANCE.—The Administrator shall issue a policy directive for the  
21 general conduct of the STTRs within the Federal Government.

22 (b) CONSULTATION.—The STTR policy directive shall be issued after  
23 consultation with—

24 (1) the heads of each of the STTR agencies;

25 (2) the Under Secretary of Commerce for Intellectual Property and  
26 Director of the United States Patent and Trademark Office; and

27 (3) the Director of the Office of Federal Procurement Policy.

28 (c) CONTENTS.—The policy directive required by subsection (a) shall pro-  
29 vide for—

30 (1) simplified, standardized, and timely STTR solicitations;

31 (2) a simplified, standardized funding process that provides for—

32 (A) the timely receipt and review of proposals;

33 (B) outside peer review, if appropriate;

34 (C) protection of proprietary information provided in proposals;

35 (D) selection of awardees;

36 (E) retention by a small business concern of the rights to data  
37 generated by the small business concern in the performance of an  
38 STTR award for a period of not less than 4 years;

39 (F) continued use by a small business concern, as a directed  
40 bailment, of any property transferred by a Federal agency to the  
41 small business concern in the second phase of the Federal agency's

1 STTR for a period of not less than 2 years, beginning on the ini-  
2 tial date of the small business concern's participation in the third  
3 phase of the STTR;

4 (G) cost sharing;

5 (H) cost principles and payment schedules; and

6 (I)(i) one-year awards for the first phase of an STTR, generally  
7 not to exceed \$100,000, greater or lesser amounts to be awarded  
8 at the discretion of the awarding Federal agency, and shorter or  
9 longer periods of time to be approved at the discretion of the  
10 awarding agency where appropriate for a particular project; and

11 (ii) 2-year awards for the second phase of the STTR, generally  
12 not to exceed \$750,000, greater or lesser amounts to be awarded  
13 at the discretion of the awarding Federal agency, and shorter or  
14 longer periods of time to be approved at the discretion of the  
15 awarding agency where appropriate for a particular project;

16 (3) minimizing the regulatory burdens associated with participation  
17 in an STTR;

18 (4) guidelines for a model agreement, to be used by all Federal agen-  
19 cies, for allocating between small business concerns and research insti-  
20 tutions—

21 (A) intellectual property rights; and

22 (B) rights, if any, to carry out follow-on research, development,  
23 or commercialization;

24 (5) procedures to ensure that—

25 (A) a recipient of an STTR award is a small business concern;  
26 and

27 (B) the small business concern exercises management and con-  
28 trol of the performance of the STTR funding agreement under a  
29 business plan providing for the commercialization of the tech-  
30 nology that is the subject matter of the award; and

31 (6) procedures to ensure, to the extent practicable, that a Federal  
32 agency that intends to pursue research, development, or production of  
33 a technology developed by a small business concern under an STTR en-  
34 ters into a follow-on, non-STTR funding agreement with the small  
35 business concern for the research, development, or production.

36 (d) RIGHTS TO DATA.—The rights provided for under subsection  
37 (c)(2)(E) shall apply to all Federal funding awards under this division, in-  
38 cluding first phase, second phase, and third phase awards.

1 **§ 26324. STTR model agreement for intellectual property**  
2 **rights**

3 (a) IN GENERAL.—The Administrator shall promulgate regulations estab-  
4 lishing a single model agreement for use in an STTR that allocates between  
5 small business concerns and research institutions—

6 (1) intellectual property rights; and

7 (2) rights, if any, to carry out follow-on research, development, or  
8 commercialization.

9 (b) OPPORTUNITY FOR COMMENT.—In promulgating regulations under  
10 subsection (a), the Administrator shall provide to affected Federal agencies,  
11 small business concerns, research institutions, and other interested parties  
12 the opportunity to submit written comments.

13 **Subchapter III—Provisions Relating to Both SBIRs and**  
14 **STTRs**

15 **§ 26341. Database**

16 (a) PUBLIC DATABASE.—The Administrator shall develop, maintain, and  
17 make available to the public a searchable, up-to-date, electronic database  
18 that includes—

19 (1) the name, size, location, and an identifying number assigned by  
20 the Administrator of each small business concern that has received a  
21 first phase or second phase SBIR or STTR award from a Federal  
22 agency;

23 (2) a description of each first phase or second phase SBIR or STTR  
24 award received by that small business concern, including—

25 (A) an abstract of the project funded by the award, excluding  
26 any information identified by the small business concern as propri-  
27 etary information;

28 (B) the Federal agency making the award; and

29 (C) the date and amount of the award;

30 (3) an identification of any business concern or subsidiary estab-  
31 lished for the commercial application of a product or service for which  
32 an SBIR or STTR award is made;

33 (4) information regarding mentors and mentoring networks, as re-  
34 quired by section 26345(f)(3) of this title; and

35 (5) with respect to assistance under STTR—

36 (A) whether the small business concern or the research institu-  
37 tion initiated their collaboration on each assisted STTR project;

38 (B) whether the small business concern or the research institu-  
39 tion originated any technology relating to the assisted STTR  
40 project;

1 (C) the length of time it took to negotiate any licensing agree-  
2 ment between the small business concern and the research institu-  
3 tion under each assisted STTR project; and

4 (D) how the proceeds from commercialization, marketing, or  
5 sale of technology resulting from each assisted STTR project were  
6 allocated (by percentage) between the small business concern and  
7 the research institution.

8 (b) GOVERNMENT DATABASE.—

9 (1) IN GENERAL.—The Administrator, in consultation with SBIR  
10 agencies and STTR agencies, shall develop and maintain a database  
11 that—

12 (A) contains for each second phase award made by a Federal  
13 agency—

14 (i) information collected in accordance with subsection (c)  
15 on revenue from the sale of new products or services resulting  
16 from the research conducted under the award;

17 (ii) information collected in accordance with subsection (c)  
18 on additional investment from any source, other than first  
19 phase or second phase SBIR or STTR awards, to further the  
20 research and development conducted under the award; and

21 (iii) any other information received in connection with the  
22 award that the Administrator, in conjunction with the SBIR  
23 and STTR managers of Federal agencies, considers relevant  
24 and appropriate;

25 (B) includes any narrative information that a small business  
26 concern receiving a second phase award voluntarily submits to fur-  
27 ther describe the outputs and outcomes of its awards;

28 (C) includes for each applicant for a first phase or second phase  
29 award that does not receive such an award—

30 (i) the name, size, and location, and an identifying number  
31 assigned by the Administration;

32 (ii) an abstract of the project; and

33 (iii) the Federal agency to which the application was made;

34 and

35 (D) includes any other data collected by or available to any Fed-  
36 eral agency that the Federal agency considers may be useful for  
37 SBIR or STTR evaluation.

38 (2) USE.—The database under paragraph (1) shall be available for  
39 use solely—

40 (A) for program evaluation purposes by the Federal Govern-  
41 ment; or

1 (B) in accordance with policy directives issued by the Adminis-  
2 trator, by other authorized persons that are subject to a use and  
3 nondisclosure agreement with the Federal Government covering  
4 the use of the database.

5 (c) UPDATING OF INFORMATION.—

6 (1) IN GENERAL.—A small business concern applying for a second  
7 phase award under this division shall be required to update information  
8 in the database established under this section for any prior second  
9 phase award received by that small business concern.

10 (2) APPORTIONMENT.—In complying with this subsection, a small  
11 business concern may apportion sales or additional investment informa-  
12 tion relating to more than one second phase award among those  
13 awards, if the small business concern notes the apportionment for each  
14 award.

15 (3) UPDATES AT TERMINATION.—

16 (A) IN GENERAL.—A small business concern receiving a second  
17 phase award under this division shall update information in the  
18 database concerning that award at the termination of the award  
19 period.

20 (B) VOLUNTARY UPDATES.—The Administrator shall request a  
21 small business concern described in subparagraph (A) to volun-  
22 tarily update such information described in subparagraph (A) an-  
23 nually after termination for a period of 5 years.

24 (d) PROTECTION OF INFORMATION.—Information provided under sub-  
25 section (b) or (c) shall be considered privileged and confidential and not  
26 subject to disclosure under section 552 of title 5.

27 (e) EFFECT OF INCLUSION OF INFORMATION IN DATABASE.—Inclusion  
28 of information in the database under this section shall not be considered  
29 to be publication for purposes of subsection (a) or (b) of section 102 of title  
30 35.

31 **§ 26342. Third phase agreements**

32 (a) IN GENERAL.—In the case of a small business concern that is award-  
33 ed a funding agreement for the second phase of an SBIR or STTR, a Fed-  
34 eral agency may enter into a third phase agreement with the small business  
35 concern for additional work to be performed during or after the second  
36 phase period.

37 (b) PROCEDURES.—The second phase funding agreement with the small  
38 business concern may, at the discretion of the Federal agency awarding the  
39 agreement, set out the procedures applicable to third phase agreements with  
40 that Federal agency or any other Federal agency.



1 (c) INTELLECTUAL PROPERTY RIGHTS.—A funding agreement under an  
2 SBIR or STTR shall include provisions setting forth the respective rights  
3 of the United States and the small business concern with respect to—

4 (1) intellectual property rights; and

5 (2) any right to carry out follow-on research.

6 **§ 26343. Inclusion of SBIR and STTR information in strategic plans**  
7

8 Program information relating to SBIRs and STTRs shall be included by  
9 a Federal agency in any update or revision required of the Federal agency  
10 under section 306(b) of title 5.

11 **§ 26344. Simplified reporting requirements**

12 (a) IN GENERAL.—The Administrator shall work with SBIR agencies and  
13 STTR agencies to standardize reporting requirements for the collection of  
14 data from SBIR or STTR applicants and awardees, including data for inclusion  
15 in the database under section 26341 of this title, taking into consideration  
16 the unique needs of each Federal agency, and to the extent possible,  
17 permitting the updating of previously reported information by electronic  
18 means.

19 (b) MINIMIZATION OF BURDEN.—The reporting requirements described  
20 in subsection (a) shall be designed to minimize the burden on small business  
21 concerns.

22 **§ 26345. Federal and State Technology Partnership program**

23 (a) DEFINITIONS.—In this section:

24 (1) APPLICANT.—The term “applicant” means an entity, organization,  
25 or individual that submits a proposal for an award or a cooperative  
26 agreement under this section.

27 (2) BUSINESS ADVICE AND COUNSELING.—The term “business advice  
28 and counseling” means advice and assistance on matters described  
29 in subsection (f) to small business concerns to guide small business  
30 concerns through the SBIR and STTR process, from application to  
31 award and successful completion of each phase of an SBIR or STTR.

32 (3) FAST PROGRAM.—The term “FAST program” means the Federal  
33 and State Technology Partnership program established under subsection  
34 (b).

35 (4) MENTOR.—The term “mentor” means an individual described in  
36 subsection (f).

37 (5) MENTORING NETWORK.—The term “mentoring network” means  
38 an association, organization, coalition, or other entity (including an individual)  
39 that meets the requirements of subsection (f).

1           (6) RECIPIENT.—The term “recipient” means a person that receives  
2           an award or becomes party to a cooperative agreement under this sec-  
3           tion.

4           (7) STATE.—The term “State” means a State, the District of Co-  
5           lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

6           (b) ESTABLISHMENT OF FAST PROGRAM.—The Administrator shall es-  
7           tablish a program to be known as the Federal and State Technology Part-  
8           nership program or FAST program, the purpose of which shall be to  
9           strengthen the technological competitiveness of small business concerns in  
10          the States.

11          (c) GRANTS AND COOPERATIVE AGREEMENTS.—

12           (1) JOINT REVIEW.—In carrying out the FAST program under this  
13           section, the Administrator and the SBIR managers at the National  
14           Science Foundation and the Department of Defense shall jointly review  
15           proposals submitted by applicants and may make awards or enter into  
16           cooperative agreements under this section based on the factors for con-  
17           sideration specified in paragraph (2), to enhance or develop in a  
18           State—

19                   (A) technology research and development by small business con-  
20                   cerns;

21                   (B) technology transfer from university research to technology-  
22                   based small business concerns;

23                   (C) technology deployment and diffusion benefiting small busi-  
24                   ness concerns;

25                   (D) the technological capabilities of small business concerns  
26                   through the establishment or operation of consortia comprised of  
27                   entities, organizations, or individuals, including—

28                           (i) State and local development agencies and entities;

29                           (ii) representatives of technology-based small business con-  
30                           cerns;

31                           (iii) industries and emerging companies;

32                           (iv) universities; and

33                           (v) small business development centers; and

34                   (E) outreach, financial support, and technical assistance to  
35                   technology-based small business concerns participating in or inter-  
36                   ested in participating in an SBIR, including initiatives—

37                           (i) to make grants or loans to companies to pay a portion  
38                           or all of the cost of developing SBIR proposals;

39                           (ii) to establish or operate a mentoring network within the  
40                           FAST program to provide business advice and counseling  
41                           that will assist small business concerns that have been identi-

1           fied by FAST program participants, program managers of  
2           participating SBIR agencies, the Administrator, or other enti-  
3           ties that—

4                   (I) are knowledgeable about the SBIRs and STTRs as  
5                   good candidates for SBIRs and STTRs; and

6                   (II) would benefit from mentoring, in accordance with  
7                   subsection (f);

8                   (iii) to create or participate in a training program for indi-  
9                   viduals providing SBIR outreach and assistance at the State  
10                  and local levels; and

11                  (iv) to encourage the commercialization of technology devel-  
12                  oped through SBIR funding.

13           (2) SELECTION CONSIDERATIONS.—In making awards or entering  
14           into cooperative agreements under this section, the Administrator and  
15           the SBIR managers at the National Science Foundation and the De-  
16           partment of Defense—

17                   (A) may consider only proposals by applicants that intend to  
18                   use a portion of the Federal assistance provided under this section  
19                   to provide outreach, financial support, or technical assistance to  
20                   technology-based small business concerns participating in or inter-  
21                   ested in participating in an SBIR; and

22                   (B) shall consider, at a minimum—

23                           (i) whether the applicant has demonstrated that the assist-  
24                           ance to be provided would address unmet needs of small busi-  
25                           ness concerns in the community, and whether it is important  
26                           to use Federal funding for the proposed activities;

27                           (ii) whether the applicant has demonstrated that a need ex-  
28                           ists to increase the number or success of small high-tech-  
29                           nology businesses in the State, as measured by the number  
30                           of first phase and second phase SBIR awards that have his-  
31                           torically been received by small business concerns in the  
32                           State;

33                           (iii) whether the projected costs of the proposed activities  
34                           are reasonable;

35                           (iv) whether the proposal integrates and coordinates the  
36                           proposed activities with other State and local programs assist-  
37                           ing small high-technology firms in the State;

38                           (v) the manner in which the applicant will measure the re-  
39                           sults of the activities to be conducted; and

40                           (vi) whether the proposal addresses the needs of—

1 (I) small business concerns owned and controlled by  
2 women;

3 (II) small business concerns owned and controlled by  
4 minorities; and

5 (III) small business concerns located in areas that  
6 have historically not participated in the SBIR and STTR  
7 programs.

8 (3) PROPOSAL LIMIT.—Not more than one proposal may be sub-  
9 mitted for inclusion in the FAST program under this section to provide  
10 services in any one State in any one fiscal year.

11 (4) PROCESS.—

12 (A) PROPOSALS AND APPLICATION.—A proposal or application  
13 for assistance under this section shall be in such form and subject  
14 to such procedures as the Administrator shall establish.

15 (B) REGULATIONS.—The Administrator shall promulgate regu-  
16 lations establishing standards for the consideration of proposals  
17 under paragraph (2), including standards regarding each of the  
18 considerations described in paragraph (2)(B).

19 (d) COOPERATION AND COORDINATION.—In carrying out the FAST pro-  
20 gram, the Administrator shall cooperate and coordinate with—

21 (1) SBIR agencies; and

22 (2) entities, organizations, and individuals actively engaged in en-  
23 hancing or developing the technological capabilities of small business  
24 concerns, including—

25 (A) State and local development agencies and entities;

26 (B) State committees established under the Experimental Pro-  
27 gram to Stimulate Competitive Research of the National Science  
28 Foundation established under section 113 of the National Science  
29 Foundation Act of 1988 (42 U.S.C. 1862g);

30 (C) State science and technology councils; and

31 (D) representatives of technology-based small business concerns.

32 (e) REQUIREMENTS.—

33 (1) COMPETITIVE BASIS.—An award under this section shall be  
34 made or a cooperative agreement under this section shall be entered  
35 into on a competitive basis.

36 (2) MATCHING REQUIREMENTS.—

37 (A) AMOUNT OF NON-FEDERAL SHARE.—

38 (i) IN GENERAL.—The non-Federal share of the cost of an  
39 activity (other than a planning activity) carried out using an  
40 award or under a cooperative agreement under this section  
41 shall be—

1 (I) one-third, in the case of a recipient that will serve  
2 small business concerns located in one of the 18 States  
3 receiving the fewest SBIR first phase awards;

4 (II) except as provided in subparagraph (B), one-half,  
5 in the case of a recipient that will serve small business  
6 concerns located in one of the 16 States receiving the  
7 greatest number of SBIR first phase awards; and

8 (III) except as provided in subparagraph (B), three-  
9 sevenths, in the case of a recipient that will serve small  
10 business concerns located in a State not described in  
11 subclause (I) or (II) that is receiving SBIR first phase  
12 awards.

13 (ii) RANKINGS.—For purposes of clause (i), the Adminis-  
14 trator shall reevaluate the ranking of a State once every 2 fis-  
15 cal years, based on the most recent statistics compiled by the  
16 Administrator.

17 (B) LOW-INCOME AREAS.—To the extent that the Federal con-  
18 tribution to the cost of the activity will be directly allocated by a  
19 recipient described in subparagraph (A) to serve small business  
20 concerns located in a qualified census tract, the non-Federal share  
21 of the cost of an activity carried out using an award or under a  
22 cooperative agreement under this section shall be one-third.

23 (C) TYPES OF FUNDING.—

24 (i) IN GENERAL.—The non-Federal share of the cost of an  
25 activity carried out by a recipient shall be comprised of not  
26 less than 50 percent cash and not more than 50 percent of  
27 indirect costs and in-kind contributions.

28 (ii) NON-FEDERAL SOURCE.—None of the non-Federal  
29 share of costs or contributions may be derived from funds  
30 from any other Federal program.

31 (3) DURATION.—An award may be made or a cooperative agreement  
32 may be entered into under this section for multiple years, not to exceed  
33 5 years in total.

34 (f) MENTORING NETWORKS.—

35 (1) IN GENERAL.—A recipient of an award or participant in a coop-  
36 erative agreement under this section may use a reasonable amount of  
37 the assistance for the establishment of a mentoring network under this  
38 section.

39 (2) CRITERIA.—A mentoring network established using assistance  
40 under this section shall—

- 1 (A) provide business advice and counseling to high technology  
2 small business concerns located in the State or region served by  
3 the mentoring network and identified under subsection  
4 (e)(1)(E)(ii) as potential candidates for an SBIR or STTR;
- 5 (B) identify volunteer mentors who—
- 6 (i) are persons associated with a small business concern  
7 that has successfully completed one or more SBIR or STTR  
8 funding agreements; and
- 9 (ii) have agreed to guide small business concerns through  
10 all stages of the SBIR or STTR process, including providing  
11 assistance relating to—
- 12 (I) proposal writing;
- 13 (II) marketing;
- 14 (III) Government accounting;
- 15 (IV) Government audits;
- 16 (V) project facilities and equipment;
- 17 (VI) human resources;
- 18 (VII) third phase partners;
- 19 (VIII) commercialization;
- 20 (IX) venture capital networking; and
- 21 (X) other matters relevant to the SBIRs and STTRs;
- 22 (C) have experience working with small business concerns par-  
23 ticipating in the SBIRs and STTRs;
- 24 (D) contribute information to the national database referred to  
25 in paragraph (3); and
- 26 (E) agree to reimburse volunteer mentors for out-of-pocket ex-  
27 penses related to service as a mentor under this section.
- 28 (3) MENTORING DATABASE.—The Administrator, directly or by con-  
29 tract, shall—
- 30 (A) include in the database required by section 26341 of this  
31 title, in cooperation with the SBIR program, STTR program, and  
32 FAST program, information on mentoring networks and mentors  
33 participating under this subsection, including a description of their  
34 areas of expertise;
- 35 (B) work cooperatively with mentoring networks to maintain  
36 and update the database; and
- 37 (C) take such action as is necessary to aggressively promote  
38 mentoring networks under this subsection.
- 39 (g) TERMINATION.—The authority to carry out the FAST program under  
40 this section terminates on September 30, 2005.

1    **§ 26346. Second phase and third phase awards for testing**  
 2                   **and evaluation of products, services, and tech-**  
 3                   **nologies for use in a technical or weapons system**

4           An award for testing and evaluation of a product, service, or technology  
 5 for use in a technical or weapons system may be made in the second or  
 6 third phase of an SBIR or STTR.

7    **§ 26347. Innovation in energy efficiency**

8           (a) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its  
 9 duties under this division relating to SBIR and STTR solicitations by Fed-  
 10 eral agencies, the Administrator shall—

11           (1) ensure that Federal agencies give high priority to small business  
 12 concerns that participate in or conduct energy efficiency or renewable  
 13 energy system research and development projects; and

14           (2) include in the annual report to Congress under section 10710(a)  
 15 of this title a determination of whether the priority described in para-  
 16 graph (1) is being carried out.

17           (b) CONSULTATION.—The Administrator shall consult with the heads of  
 18 other Federal agencies in determining whether priority has been given to  
 19 small business concerns that participate in or conduct energy efficiency or  
 20 renewable energy system research and development projects, as required by  
 21 this section.

22           (c) GUIDELINES.—The Administrator shall, as soon as practicable after  
 23 December 19, 2007, issue guidelines and directives to assist Federal agen-  
 24 cies in meeting the requirements of this section.

25    **DIVISION I—SMALL BUSINESS DEVELOPMENT**  
 26                   **CENTER PROGRAM**  
 27                   **CHAPTER 271—SMALL BUSINESS DEVELOPMENT**  
 28                   **CENTER PROGRAM**

Sec.

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29    **§ 27101. Definitions**

30           In this chapter:

1 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
2 trator” means the Associate Administrator for Small Business Develop-  
3 ment Centers.

4 (2) FINANCIAL ASSISTANCE.—The term “financial assistance” means  
5 financial assistance under a grant, contract, or cooperative agreement.

6 (3) FINANCIAL ASSISTANCE AGREEMENT.—The term “financial as-  
7 sistance agreement” means a grant agreement, contract, or cooperative  
8 agreement under which financial assistance is provided under this  
9 chapter.

10 (4) PROGRAM.—The term “program” means the small business de-  
11 velopment center program under this chapter.

12 (5) QUALIFIED ENTITY.—The term “qualified entity” means—

13 (A) a public or private institution of higher education (including  
14 a land-grant college or university, a college or school of business,  
15 engineering, commerce, or agriculture, and a community college or  
16 junior college);

17 (B) a women’s business center operating under chapter 273;  
18 and

19 (C) any other entity if the entity, on December 31, 1990, was  
20 receiving a grant or was a party to a contract or cooperative  
21 agreement under this chapter.

22 (7) STATE.—The term “State” means a State, the District of Co-  
23 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

## 24 § 27102. Financial assistance agreements

25 (a) IN GENERAL.—Under a program to be known as the small business  
26 development center program, the Administrator may provide financial as-  
27 sistance to a qualified entity to assist in establishing a small business devel-  
28 opment center project for the purpose of providing—

29 (1) a small business oriented employment or natural resources devel-  
30 opment program;

31 (2) studies, research, and counseling concerning the managing, fi-  
32 nancing, and operation of small business concerns;

33 (3) management and technical assistance regarding participation by  
34 small business concerns in international markets, export promotion,  
35 and technology transfer;

36 (4) delivery or distribution of services and information in connection  
37 with an activity described in paragraph (1), (2), or (3); and

38 (5) providing access to business analysts that can refer small busi-  
39 ness concerns to available experts.



1 (b) REQUIREMENTS.—The Administrator shall require an applicant for fi-  
2 nancial assistance under this chapter with performance commencing on or  
3 after January 1, 1992, to—

4 (1) have its own budget; and

5 (2) primarily use institutions of higher education and women’s busi-  
6 ness centers operating under chapter 273 to provide services to the  
7 small business community.

8 (c) TERM.—The term of a financial assistance agreement under sub-  
9 section (a) shall be made on a calendar year basis or to coincide with the  
10 Federal fiscal year.

11 (d) COOPERATION.—A small business development center shall work in  
12 close cooperation with the Administration’s regional and local offices, the  
13 Department of Commerce, appropriate Federal, State, and local agencies  
14 and the small business community to serve as an active information dissemi-  
15 nation and service delivery mechanism for existing trade promotion, trade  
16 finance, trade adjustment, trade remedy, and trade data collection programs  
17 of particular utility for small business concerns.

18 (e) MANAGEMENT.—

19 (1) IN GENERAL.—The program shall be under the general manage-  
20 ment and oversight of the Administrator for the delivery of programs  
21 and services to the small business community.

22 (2) PROGRAMS AND SERVICES.—Programs and services referred to  
23 in paragraph (1) shall be jointly developed, negotiated, and agreed on,  
24 with full participation of a qualified entity and the Administrator,  
25 under an executed financial assistance agreement between the qualified  
26 entity and the Administrator.

27 (f) ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS.—

28 (1) IN GENERAL.—Small business development centers may form an  
29 Association to pursue matters of common concern.

30 (2) RECOGNITION; DOCUMENTS.—

31 (A) IN GENERAL.—If more than a majority of the small busi-  
32 ness development centers that are operating under agreements  
33 with the Administrator are members of an Association formed  
34 under paragraph (1), the Administrator shall—

35 (i) recognize the existence and activities of the Association;  
36 and

37 (ii) consult with the Association and develop documents—

38 (I) announcing the annual scope of activities under  
39 this chapter;

40 (II) requesting proposals to deliver assistance as pro-  
41 vided in this chapter; and

1 (III) governing the general operations and administra-  
 2 tion of the program, specifically including the develop-  
 3 ment of regulations and a uniform negotiated financial  
 4 assistance agreement for use on an annual basis when  
 5 entering into individual negotiated financial assistance  
 6 agreements with small business development centers.

7 (B) INCORPORATION OF CERTAIN PROVISIONS.—In regulations  
 8 under subparagraph (A)(ii)(III), provisions governing audits, cost  
 9 principles and administrative requirements for financial assistance  
 10 that are included in uniform requirements of Office of Manage-  
 11 ment and Budget Circulars shall be incorporated by reference and  
 12 shall not be set forth in summary or other form.

13 (3) LEVERAGING OF RESOURCES.—On an annual basis, a small busi-  
 14 ness development center shall review and coordinate public and private  
 15 partnerships and cosponsorships with the Administrator for the pur-  
 16 pose of more efficiently leveraging available resources on a national and  
 17 a State basis.

18 (g) FUNDING.—

19 (1) MATCHING AMOUNT.—

20 (A) IN GENERAL.—The Administrator shall require as a condi-  
 21 tion of any financial assistance agreement (or amendment or  
 22 modification of a financial assistance agreement) made to a quali-  
 23 fied entity under this chapter that a matching amount (excluding  
 24 any fees collected from recipients of such assistance) equal to the  
 25 amount of the financial assistance be provided from sources other  
 26 than the Federal Government, to be comprised of not less than 50  
 27 percent cash and not more than 50 percent of indirect costs and  
 28 in-kind contributions.

29 (B) RESTRICTION.—The matching amount described in sub-  
 30 paragraph (A) shall not include any indirect costs or in-kind con-  
 31 tributions derived from any Federal program.

32 (2) FUNDING FORMULA.—

33 (A) IN GENERAL.—Subject to subparagraph (C), the total  
 34 amount of financial assistance received by recipients of financial  
 35 assistance in a State under this section shall be equal to an  
 36 amount determined in accordance with the following formula:

37 (i) PRO RATA BASIS.—The annual amount made available  
 38 under section 10903(a) of this title for the small business de-  
 39 velopment center program, less any reductions made for ex-  
 40 penses authorized by subparagraph (E), shall be divided on  
 41 a pro rata basis, based on the percentage of the population

1 of each State, as compared with the population of the United  
2 States.

3 (ii) MINIMUM FUNDING LEVEL.—If the pro rata amount  
4 calculated under clause (i) for any State is less than the min-  
5 imum funding level under subparagraph (C), the Adminis-  
6 trator shall determine the aggregate amount necessary to  
7 achieve that minimum funding level for each such State.

8 (iii) DEDUCTION.—The aggregate amount calculated under  
9 clause (ii) shall be deducted from the amount calculated  
10 under clause (i) for States eligible to receive more than the  
11 minimum funding level. The deductions shall be made on a  
12 pro rata basis, based on the population of each such State,  
13 as compared with the total population of all such States.

14 (iv) ADDITION.—The aggregate amount deducted under  
15 clause (iii) shall be added to the amount of financial assist-  
16 ance of the States that are not eligible to receive more than  
17 the minimum funding level in order to achieve the minimum  
18 funding level for each such State, except that the eligible  
19 amount of financial assistance to any State shall not be re-  
20 duced to an amount below the minimum funding level.

21 (B) DETERMINATION OF AMOUNT OF FINANCIAL ASSISTANCE.—  
22 The amount of financial assistance for which a State is eligible to  
23 apply under this paragraph shall be the amount determined under  
24 subparagraph (A), subject to any modifications required under  
25 subparagraph (C), and shall be based on the amount available for  
26 the fiscal year in which performance of the financial assistance  
27 agreement commences, but not including amounts distributed in  
28 accordance with subparagraph (D). The total amount of financial  
29 assistance received by recipients of financial assistance in a State  
30 under any provision of this paragraph shall not exceed the amount  
31 of matching funds from sources other than the Federal Govern-  
32 ment, as required under paragraph (1).

33 (C) MINIMUM FUNDING LEVEL.—The amount of the minimum  
34 funding level for each State shall be determined for each fiscal  
35 year based on the amount made available for that fiscal year to  
36 carry out this chapter, as follows:

37 (i) NOT LESS THAN \$81,500,000 AND NOT MORE THAN  
38 \$90,000,000 MADE AVAILABLE.—If the amount made available  
39 is not less than \$81,500,000 and not more than \$90,000,000,  
40 the minimum funding level shall be \$500,000.

1 (ii) LESS THAN \$81,500,000 MADE AVAILABLE.—If the  
 2 amount made available is less than \$81,500,000, the min-  
 3 imum funding level shall be the remainder of \$500,000 minus  
 4 a percentage of \$500,000 equal to the percentage amount by  
 5 which the amount made available is less than \$81,500,000.

6 (iii) MORE THAN \$90,000,000 MADE AVAILABLE.—If the  
 7 amount made available is more than \$90,000,000, the min-  
 8 imum funding level shall be the sum of \$500,000 plus a per-  
 9 centage of \$500,000 equal to the percentage amount by which  
 10 the amount made available exceeds \$90,000,000.

11 (D) DISTRIBUTIONS.—Subject to subparagraph (C), if qualified  
 12 entities in any State do not apply for, or use the full funding eligi-  
 13 bility for the State for a fiscal year, the Administrator shall dis-  
 14 tribute the remaining funds as follows:

15 (i) AMOUNT LESS THAN THE AMOUNT RECEIVED IN FISCAL  
 16 YEAR 2000.—If the amount of financial assistance to any  
 17 State is less than the amount received by recipients of finan-  
 18 cial assistance in that State in fiscal year 2000, the Adminis-  
 19 trator shall distribute the remaining funds, on a pro rata  
 20 basis, based on the percentage of shortage of each such State,  
 21 as compared with the total amount of such remaining funds  
 22 available, to the extent necessary to increase the amount of  
 23 the financial assistance to the amount received by recipients  
 24 of financial assistance in that State in fiscal year 2000, or  
 25 until such funds are exhausted, whichever first occurs.

26 (ii) REMAINING AMOUNT.—If any funds remain after appli-  
 27 cation of clause (i), the remaining amount may be distributed  
 28 as supplemental financial assistance to applicants in any  
 29 State, as the Administrator determines, in the discretion of  
 30 the Administrator, to be appropriate, after consultation with  
 31 the Association.

32 (E) USE OF AMOUNTS.—

33 (i) IN GENERAL.—Of the amounts made available in any  
 34 fiscal year to carry out this chapter—

35 (I) not more than \$500,000 may be used by the Ad-  
 36 ministrator to pay expenses described in paragraphs (2)  
 37 to (4) of section 10903(a) of this title; and

38 (II) not more than \$500,000 may be used by the Ad-  
 39 ministrator to pay the examination expenses described in  
 40 section 10903(a)(5) of this title.

(ii) LIMITATION.—No funds described in clause (i) may be used for examination expenses under section 10903(a)(5) of this title if the use would reduce the amount of financial assistance made available under subparagraph (A)(i) to less than \$85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general program) or would further reduce the amount of such financial assistance below that amount.

(F) EXCLUSIONS.—Financial assistance provided to grant recipients in a State by the Administrator or another Federal agency to carry out subsection (j) or section 27104(b)(7) of this title, or for supplemental financial assistance under subparagraph (D)(ii) of this paragraph, shall not be included in the calculation of maximum funding for a State under subparagraph (B) of this paragraph.

(h) PORTABLE ASSISTANCE FOR STARTUP AND SUSTAINABILITY NON-MATCHING FINANCIAL ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—From the funds appropriated under section 10903(h) of this title, the Administrator shall reserve not less than \$1,000,000 for each fiscal year to develop portable assistance for startup and sustainability non-matching financial assistance programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility downsizing or closing that has resulted in the loss of jobs or small business instability.

(2) MAXIMUM AMOUNT.—Non-matching financial assistance under this subsection shall not exceed \$100,000.

(3) USE.—Non-matching financial assistance under this subsection shall be used for small business development center personnel expenses and related small business programs and services.

(i) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) IN GENERAL.—Subject to paragraph (2), a small business development center may enter into a contract with a Federal agency to provide specific assistance to small business concerns.

(2) CONTRACT PREREQUISITES.—

(A) IN GENERAL.—Before bidding on a contract under paragraph (1), a small business development center shall receive approval from the Associate Administrator of the subject and general scope of the contract.

1 (B) APPROVAL.—Approval of a contract under paragraph (1)  
2 shall be based on a determination that—

3 (i) the contract will provide assistance to small business  
4 concerns; and

5 (ii) performance of the contract will not hinder the small  
6 business development center in carrying out the terms of the  
7 financial assistance agreement received by the small business  
8 development center from the Administrator.

9 (3) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under  
10 this subsection shall not be subject to the matching funds or eligibility  
11 requirements of subsection (g).

12 (4) NONAPPLICABILITY TO CERTAIN CONTRACTING GOALS.—Not-  
13 withstanding any other provision of law, a contract for assistance under  
14 this subsection shall not be applied to a Federal agency’s contracting  
15 goal under section 25106 of this title for small business concerns  
16 owned and controlled by socially and economically disadvantaged indi-  
17 viduals, small business concerns owned and controlled by women, or  
18 other small business concerns.

19 (j) ADDITIONAL FINANCIAL ASSISTANCE.—

20 (1) IN GENERAL.—A qualified entity that is funded by the Adminis-  
21 trator as a small business development center may apply to the Admin-  
22 istrator for additional financial assistance to be used solely to assist,  
23 as provided in paragraphs (2) to (7) of section 27104(b), in—

24 (A) the development and enhancement of exports by small busi-  
25 ness concerns;

26 (B) technology transfer; and

27 (C) outreach, development, and enhancement of minority-owned  
28 small business startups or expansions, HUBZone small business  
29 concerns, veteran-owned small business startups or expansions,  
30 and women-owned small business startups or expansions, in com-  
31 munities affected by base closings or military or corporate  
32 downsizing or in rural or underserved communities.

33 (2) COMPLIANCE REQUIREMENT.—An applicant applying for addi-  
34 tional financial assistance under paragraph (1) shall comply with all of  
35 the provisions of this chapter, including providing matching funds.

36 (3) FUNDING.—Funding under this subsection shall be effective for  
37 any fiscal year to the extent provided in advance in appropriations  
38 Acts.

39 (4) LIMITATION ON AMOUNT OF GRANT.—No recipient of funds  
40 under this subsection shall receive financial assistance that would ex-  
41 ceed its pro rata share of a \$15,000,000 program based on the popu-

1 lations to be served by the small business development center as com-  
 2 pared with the total population of the United States.

3 (5) MINIMUM STATE ELIGIBILITY AMOUNT.—The minimum amount  
 4 of eligibility for recipients of financial assistance in any State shall be  
 5 \$100,000.

6 (6) FINANCIAL ASSISTANCE TO NONPROFIT ENTITIES.—

7 (A) IN GENERAL.—In a State described in subparagraph (B),  
 8 the Administrator may provide financial assistance to a nonprofit  
 9 entity in the State to carry out the activities specified in this sub-  
 10 section.

11 (B) STATES.—A State referred to in subparagraph (A) is a  
 12 State in which—

13 (i) the Administrator has not provided financial assistance  
 14 under subsection (a); or

15 (ii) no application for financial assistance has been made  
 16 by a small business development center under this subsection  
 17 within 60 days after the later of—

18 (I) the effective date of a financial assistance agree-  
 19 ment under subsection (a) to the small business develop-  
 20 ment center; or

21 (II) the date on which the Administrator notifies the  
 22 financial assistance recipient funded under subsection (a)  
 23 that funds are available for applications for financial as-  
 24 sistance under this subsection.

25 (C) MATCHING FUNDS.—A nonprofit entity that receives finan-  
 26 cial assistance under this paragraph shall comply with the match-  
 27 ing funds requirement of subsection (g).

28 (D) APPROPRIATIONS.—Financial assistance under this para-  
 29 graph shall be effective for any fiscal year only to the extent pro-  
 30 vided in advance in an appropriations Act.

31 (E) PRO RATA SHARE.—The amount of financial assistance pro-  
 32 vided under this paragraph in a State shall be limited to the pro  
 33 rata share provisions of paragraph (4).

34 (k) PRIVACY REQUIREMENTS.—

35 (1) IN GENERAL.—A small business development center, consortium  
 36 of small business development centers, or contractor or agent of a small  
 37 business development center may not disclose the name, address, or  
 38 telephone number of any individual or small business concern receiving  
 39 assistance under this chapter without the consent of the individual or  
 40 small business concern unless—

1 (A) the Administrator is ordered to make such a disclosure by  
 2 a court in any civil or criminal enforcement action initiated by a  
 3 Federal agency or State agency; or

4 (B) the Administrator considers such a disclosure to be nec-  
 5 essary for the purpose of conducting a financial audit of a small  
 6 business development center.

7 (2) LIMITATION.—A disclosure under this paragraph (1)(B) shall be  
 8 limited to the information necessary for an audit.

9 (3) USE OF INFORMATION BY THE ADMINISTRATOR.—This chapter  
 10 does not—

11 (A) restrict access by the Administrator to program activity  
 12 data; or

13 (B) preclude the Administrator from using client information to  
 14 conduct client surveys.

15 (4) REGULATIONS.—

16 (A) IN GENERAL.—The Administrator shall issue regulations to  
 17 establish standards—

18 (i) for disclosures with respect to financial audits under  
 19 paragraph (1)(B); and

20 (ii) for client surveys under paragraph (3)(B), including  
 21 standards for oversight of such surveys and for dissemination  
 22 and use of client information.

23 (B) MAXIMUM PRIVACY PROTECTION.—Regulations under this  
 24 paragraph, shall, to the extent practicable, provide for the max-  
 25 imum amount of privacy protection.

26 (C) INSPECTOR GENERAL.—Until the effective date of regula-  
 27 tions under this paragraph, any client survey and the use of such  
 28 information shall be approved by the Inspector General of the Ad-  
 29 ministration, who shall include such approval in a semiannual re-  
 30 port.

31 **§ 27103. Plans**

32 (a) PROVISION OF FINANCIAL ASSISTANCE CONSISTENT WITH AREA  
 33 PLAN.—Financial assistance shall not be made available to a qualified enti-  
 34 ty if approving the assistance would be inconsistent with a plan for the area  
 35 of a State in which service is to be provided that has been adopted by an  
 36 agency recognized by the State as authorized to adopt an area plan and ap-  
 37 proved by the Administrator in accordance with standards and requirements  
 38 established under this chapter.

39 (b) PLAN.—



1 (1) IN GENERAL.—A qualified entity may apply to participate in the  
2 small business development center program by submitting to the Ad-  
3 ministrator for approval a plan that—

4 (A) identifies the entities authorized under this chapter to par-  
5 ticipate in the small business development center program;

6 (B) identifies the geographic area to be served;

7 (C) describes the services that the applicant would provide and  
8 the method for delivering the services;

9 (D) includes a budget; and

10 (E) includes any other information and assurances that the Ad-  
11 ministrator may require to ensure that the qualified entity will  
12 carry out the activities eligible for assistance.

13 (2) ACTION BY THE ADMINISTRATOR.—

14 (A) IN GENERAL.—The Administrator may approve, condi-  
15 tionally approve, or reject a qualified entity plan or combination  
16 of plans submitted.

17 (B) REVIEW.—In all cases, the Administrator shall review a  
18 qualified entity plan—

19 (i) for conformity with an area plan approved under sub-  
20 section (a); and

21 (ii) with a view toward providing small business concerns  
22 with the most comprehensive and coordinated assistance in  
23 the State or part of a State to be served.

24 (c) ASSISTANCE OUTSIDE THE STATE.—The Administrator may permit  
25 a small business development center to provide advice, information, and as-  
26 sistance, as described in section 27104 of this title, to small business con-  
27 cerns located outside the State in which the small business develop-  
28 ment center is located, but only to the extent that the small business concerns are  
29 located within close geographical proximity to the small business develop-  
30 ment center, as determined by the Administrator.

### 31 **§ 27104. Services**

32 (a) IN GENERAL.—A small business development center shall assist small  
33 business concerns in solving problems concerning operations, manufacturing,  
34 engineering, technology exchange and development, personnel administra-  
35 tion, marketing, sales, merchandising, finance, accounting, business strategy  
36 development, and other disciplines required for small business growth and  
37 expansion, innovation, increased productivity, and management improve-  
38 ment, and for decreasing industry economic concentrations.

39 (b) SERVICES TO BE PROVIDED.—Services provided by a small business  
40 development center shall include—

1 (1) furnishing one-to-one individual counseling to small business con-  
2 cerns, including—

3 (A) working with individuals to increase awareness of basic  
4 credit practices and credit requirements;

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

7 (C) working with the Administrator to develop and provide in-  
8 formational tools for use in working with individuals on pre-busi-  
9 ness startup planning, existing business expansion, and export  
10 planning; and

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

13 (2) assisting in technology transfer, research and development (in-  
14 cluding applied research), and coupling from existing sources to small  
15 business concerns, including—

16 (A) working to increase the access of small business concerns  
17 to the capabilities of automated flexible manufacturing systems;

18 (B) working through existing networks and developing new net-  
19 works for technology transfer that encourage partnership between  
20 the small business and academic communities to help commer-  
21 cialize university-based research and development and introduce  
22 university-based engineers and scientists to their counterparts in  
23 small technology-based firms; and

24 (C) exploring the viability of developing shared production facili-  
25 ties, under appropriate circumstances;

26 (3)(A) in cooperation with the Department of Commerce and other  
27 relevant Federal agencies, actively assisting small business concerns in  
28 exporting by—

29 (i) identifying and developing potential export markets for small  
30 business concerns;

31 (ii) facilitating export transactions for small business concerns;

32 (iii) developing linkages between small business concerns and  
33 prescreened foreign buyers;

34 (iv) assisting small business concerns in participating in inter-  
35 national trade shows;

36 (v) assisting small business concerns in obtaining export financ-  
37 ing; and

38 (vi) facilitating the development or reorientation of marketing  
39 and production strategies; and

1 (B) where appropriate, working with the Administrator in coopera-  
2 tion with the State to establish a State international trade center for  
3 the purposes described in subparagraph (A);

4 (4)(A) developing a program in conjunction with the Export-Import  
5 Bank of the United States and local and regional Administration of-  
6 fices that will enable the small business development center to serve as  
7 an information network and to assist small business concern applicants  
8 for financing programs of the Export-Import Bank of the United  
9 States; and

10 (B) otherwise identifying and helping to make available export fi-  
11 nancing programs to small business concerns;

12 (5) working closely with the small business community, small busi-  
13 ness consultants, State agencies, universities, and other appropriate  
14 groups to make translation services more readily available to small  
15 business concerns doing business, or attempting to develop business, in  
16 foreign markets;

17 (6) cooperating with the Department of Commerce and other rel-  
18 evant Federal agencies to increase access to available export market in-  
19 formation systems, including the Commercial Information Management  
20 System;

21 (7) assisting small business concerns in developing and implementing  
22 strategic business plans to timely and effectively respond to the  
23 planned closure (or reduction) of a Department of Defense facility  
24 within the community, or actual or projected reductions in small busi-  
25 ness concerns' business base due to the actual or projected termination  
26 (or reduction) of a Department of Defense program or a contract in  
27 support of a Department of Defense program by—

28 (A) developing broad economic assessments of the adverse im-  
29 pacts of—

30 (i) the closure (or reduction) of the Department of Defense  
31 facility on the small business concerns providing goods or  
32 services to the facility or to the military and civilian personnel  
33 stationed or working at the facility; and

34 (ii) the termination (or reduction) of a Department of De-  
35 fense program (or contracts under a Department of Defense  
36 program) on the small business concerns participating in the  
37 program as a prime contractor, subcontractor, or supplier at  
38 any tier;

39 (B) developing, in conjunction with appropriate Federal, State,  
40 and local governmental entities and private sector organizations,

1 the parameters of a transition adjustment program adaptable to  
2 the needs of individual small business concerns;

3 (C) conducting appropriate programs to inform the affected  
4 small business community regarding the anticipated adverse im-  
5 pacts identified under subparagraph (A) and the economic adjust-  
6 ment assistance available to small business concerns; and

7 (D) assisting small business concerns in developing and imple-  
8 menting an individualized transition business plan;

9 (8)(A) maintaining current information concerning Federal, State,  
10 and local regulations that affect small business concerns and counsel  
11 small business concerns on methods of compliance; and

12 (B) providing counseling and technology development when necessary  
13 to help small business concerns find solutions for complying with envi-  
14 ronmental, energy, health, safety, and other Federal, State, and local  
15 regulations;

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

18 (10) providing and maintaining a comprehensive library that con-  
19 tains current information and statistical data needed by small business  
20 concerns;

21 (11) maintaining a working relationship and open communications  
22 with the financial and investment communities, legal associations, local  
23 and regional private consultants, and local and regional small business  
24 groups and associates to help address the various needs of the small  
25 business community;

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

29 (13) in cooperation with the Department of Commerce, the Adminis-  
30 trator, and relevant Federal agencies, actively assisting rural small  
31 business concerns in exporting by—

32 (A) identifying and developing potential export markets for  
33 rural small business concerns;

34 (B) facilitating export transactions for rural small business con-  
35 cerns;

36 (C) developing linkages between rural small business concerns  
37 and prescreened foreign buyers;

38 (D) assisting rural small business concerns in participating in  
39 international trade shows; and

40 (E) assisting rural small business concerns in obtaining export  
41 financing and developing marketing and production strategies;

1 (14) assisting rural small business concerns in developing marketing  
2 and production strategies that will enable rural small business concerns  
3 to better compete in the domestic market;

4 (15) assisting rural small business concerns by—

5 (A) providing technical assistance needed by rural small busi-  
6 ness concerns;

7 (B) making available managerial assistance to rural small busi-  
8 ness concerns; and

9 (C) providing information and assistance in obtaining financing  
10 for business startups and expansion;

11 (16) in conjunction with the United States National Tourism Orga-  
12 nization, assist rural small business concerns in developing the tourism  
13 potential of rural communities by—

14 (A) identifying the cultural, historic, recreational, and scenic re-  
15 sources of rural communities;

16 (B) providing assistance to small business concerns in devel-  
17 oping tourism marketing and promotion plans relating to tourism  
18 in rural areas; and

19 (C) assisting small business concerns in obtaining capital for  
20 starting or expanding businesses primarily serving tourists;

21 (17) maintaining lists of local and regional private consultants to  
22 whom small business concerns can be referred;

23 (18) providing information to small business concerns regarding  
24 compliance with regulatory requirements;

25 (19) developing informational publications, establishing resource cen-  
26 ters of reference materials, and distributing compliance guides pub-  
27 lished under section 212(a) of the Small Business Regulatory Enforce-  
28 ment Fairness Act of 1996 (5 U.S.C. 601 note, Public Law 104–121);

29 (20) providing small business concern owners with access to a wide  
30 variety of export-related information by establishing on-line computer  
31 linkages between small business development centers and an inter-  
32 national trade data information network with ties to the United States  
33 Export Assistance Center program; and

34 (21) providing information and assistance to small business concerns  
35 with respect to establishing drug-free workplace programs on or before  
36 October 1, 2006.

37 (e) UPGRADING AND MODIFICATION OF SERVICES.—A small business de-  
38 velopment center shall continue to upgrade and modify its services, as need-  
39 ed, in order to meet the changing and evolving needs of the small business  
40 community.

41 (d) LOCATION.—

1           (1) PROXIMITY OF SERVICE.—A small business development center  
2 shall provide service as close as possible to small business concerns by  
3 providing extension services and using satellite locations when nec-  
4 essary.

5           (2) FACILITIES AND STAFF.—The facilities and staff of a small busi-  
6 ness development center shall be located in such places as to provide  
7 maximum accessibility and benefits to the small business concerns that  
8 the small business development center is intended to serve.

9           (e) OTHER PROGRAMS.—To the extent possible, a small business develop-  
10 ment center shall make full use of other Federal and State government pro-  
11 grams that are concerned with aiding small business concerns.

12           (f) STAFF.—A small business development center shall have a full-time  
13 staff, including a full-time director who shall have the authority to make  
14 expenditures under the small business development center's budget and who  
15 shall manage the program activities.

16           (g) ACCESS.—A small business development center shall have access to—

17           (1) business analysts to counsel, assist, and inform small business  
18 clients;

19           (2) technology transfer agents to provide state-of-art technology to  
20 small business concerns through coupling with national and regional  
21 technology data sources;

22           (3) information specialists to assist in providing information searches  
23 and referrals to small business;

24           (4) part-time professional specialists to conduct research or to pro-  
25 vide counseling assistance whenever the need arises; and

26           (5) laboratory facilities and adaptive engineering facilities.

27           (h) USE OF SMALL BUSINESS VENDORS.—A small business development  
28 center shall use and compensate as one of its resources qualified vendors  
29 that are small business concerns, including private management consultants,  
30 private consulting engineers, and private testing laboratories, to provide  
31 services as described in this section to small business concerns on behalf of  
32 the small business development center.

33           (i) COOPERATION IN THE PROVISION OF SERVICES.—In performing the  
34 services described in subsection (b), a small business development center  
35 shall work in close cooperation with the Administration's regional and local  
36 offices, the local small business community, and appropriate State and local  
37 agencies.

38           (j) INFORMATION SHARING SYSTEM.—

39           (1) IN GENERAL.—The Associate Administrator, in consultation with  
40 the small business development centers, shall develop and implement an  
41 information sharing system.

1 (2) FINANCIAL ASSISTANCE.—

2 (A) IN GENERAL.—Subject to amounts approved in advance in  
3 appropriations Acts, the Administrator may provide grants or  
4 enter into cooperative agreements to one or more small business  
5 development centers to carry out this subsection.

6 (B) DURATION.—Financial assistance under subparagraph (A)  
7 shall be awarded for a period of not more than 5 years.

8 (C) MATCHING FUNDS.—The matching funds provisions of sec-  
9 tion 27102 of this title shall not be applicable to a grant or coop-  
10 erative agreement under subparagraph (A).

11 (3) FUNCTIONS.—The information sharing system shall—

12 (A) allow small business development centers participating in  
13 the small business development center program to exchange infor-  
14 mation about their programs; and

15 (B) provide information central to technology transfer.

16 **§ 27105. Export enhancement plans**

17 (a) IN GENERAL.—Where appropriate, a small business development cen-  
18 ter shall work in conjunction with the relevant State agency and the Depart-  
19 ment of Commerce to develop a comprehensive plan for enhancing the ex-  
20 port potential of small business concerns located in the State.

21 (b) STATE OFFICE OF INTERNATIONAL TRADE.—An export enhancement  
22 plan may provide for—

23 (1) the cofunding and staffing of a State office of international trade  
24 within a small business development center, using joint Federal and  
25 State funding; and

26 (2) any other appropriate measures directed at improving the export  
27 performance of small business concerns in the State.

28 **§ 27106. Assistance from Federal laboratories**

29 (a) IN GENERAL.—A laboratory that is operated and funded by the Fed-  
30 eral Government shall cooperate with the Administrator in developing and  
31 establishing programs to support small business development centers by—

32 (1) making facilities and equipment available;

33 (2) providing experiment station capabilities in adaptive engineering;

34 (3) providing library and technical information processing capabili-  
35 ties; and

36 (4) providing professional staff for consulting.

37 (b) REIMBURSEMENT.—The Administrator may reimburse a laboratory  
38 for the provision of services described in subsection (a).

1 **§ 27107. Assistance from the National Science Foundation**

2 The National Science Foundation shall cooperate with the Administrator  
3 and with small business development centers in developing and establishing  
4 programs to support small business development centers.

5 **§ 27108. Assistance from the National Aeronautics and**  
6 **Space Administration**

7 The National Aeronautics and Space Administration and regional tech-  
8 nology transfer centers supported by the National Aeronautics and Space  
9 Administration shall cooperate with small business development centers par-  
10 ticipating in the small business development center program.

11 **§ 27109. National Small Business Development Center Advi-**  
12 **sory Board**

13 (a) ESTABLISHMENT.—There is established a National Small Business  
14 Development Center Advisory Board (referred to in this section as the  
15 “Board”).

16 (b) MEMBERSHIP.—

17 (1) IN GENERAL.—The Board shall consist of 9 members appointed  
18 from civilian life by the Administrator.

19 (2) QUALIFICATIONS.—A member of the Board shall be a person of  
20 outstanding qualifications known to be familiar and sympathetic with  
21 small business needs and problems.

22 (3) REPRESENTATION.—Not more than 3 members of the Board  
23 shall be from universities or their affiliates, and 6 members shall be  
24 from small business concerns or associations representing small busi-  
25 ness concerns.

26 (4) TERM.—A member of the Board shall serve a term of 3 years,  
27 with one-third of the members changing each year.

28 (c) CHAIRMAN.—The Board shall elect a chairman.

29 (d) DUTIES.—The Board shall advise, counsel, and confer with the Asso-  
30 ciate Administrator in carrying out the duties described in this chapter.

31 (e) MEETINGS.—The Board shall meet at least semiannually and at the  
32 call of the Chairman of the Board.

33 (f) COMPENSATION.—A member of the Board shall be entitled to be com-  
34 pensated at the rate not in excess of the per diem equivalent of the max-  
35 imum rate payable under section 5376 of title 5 for each day engaged in  
36 activities of the Board and shall be entitled to be reimbursed for expenses  
37 as a member of the Board.

38 **§ 27110. Small business development center advisory boards**

39 (a) ESTABLISHMENT.—A small business development center shall estab-  
40 lish an advisory board.



1 (b) CHAIRMAN.—A small business development center advisory board  
2 shall elect a chairman.

3 (c) DUTIES.—A small business development center advisory board shall  
4 advise, counsel, and confer with the director of the small business develop-  
5 ment center on all policy matters pertaining to the operation of the small  
6 business development center, including the persons that may be eligible to  
7 receive assistance from, and how local and regional private consultants may  
8 participate with, the small business development center.

9 **§ 27111. Program examination and accreditation**

10 (a) EXAMINATION.—The Administrator shall conduct a biennial pro-  
11 grammatic and financial examination of each small business development  
12 center.

13 (b) ACCREDITATION.—The Administrator may provide financial support,  
14 by contract or otherwise, to the Association for the purpose of developing  
15 a small business development center accreditation program.

16 (c) EXTENSION OR RENEWAL OF FINANCIAL AGREEMENTS.—

17 (1) IN GENERAL.—In extending or renewing a financial assistance  
18 agreement of a small business development center, the Administrator  
19 shall consider the results of the examination and accreditation program  
20 conducted under subsections (a) and (b).

21 (2) ACCREDITATION REQUIREMENT.—

22 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
23 Administrator may not renew or extend a financial assistance  
24 agreement with a small business development center unless the  
25 small business development center has been approved under the  
26 accreditation program conducted under this section.

27 (B) WAIVER.—The Associate Administrator may waive the ac-  
28 creditation requirement on a showing that the small business de-  
29 velopment center is making a good faith effort to obtain accredita-  
30 tion.

31 **§ 27112. Limitations on authority**

32 (a) APPROPRIATIONS.—The authority to enter into financial assistance  
33 agreements under this chapter shall be in effect for a fiscal year only to  
34 the extent and in such amounts as are provided in advance in appropria-  
35 tions Acts.

36 (b) SUSPENSION, TERMINATION, OR FAILURE TO RENEW OR EXTEND  
37 FINANCIAL ASSISTANCE AGREEMENT.—After the Administrator enters into  
38 a financial assistance agreement with a qualified entity under this chapter,  
39 the Administrator shall not suspend, terminate, or fail to renew or extend  
40 the financial assistance agreement unless the Administrator provides the  
41 qualified entity with written notification stating the reasons for the suspen-

1 sion, termination, or failure to renew or extend and affording the qualified  
2 entity an opportunity for a hearing, appeal, or other administrative pro-  
3 ceeding under chapter 5 of title 5.

4 (e) COMPETITION FOR SUCCESSOR FINANCIAL ASSISTANCE AGREE-  
5 MENTS.—If a financial assistance agreement with a qualified entity under  
6 this chapter is not renewed or extended, any award of a successor financial  
7 assistance agreement to another qualified entity under this chapter shall be  
8 made on a competitive basis.

9 (d) NO OTHER FUNDING.—The Administrator shall not fund any small  
10 business development center or variation of a small business development  
11 center except as authorized by this chapter.

12 **§ 27113. Prohibition of fees for counseling service**

13 A small business development center shall not impose or otherwise collect  
14 a fee or other compensation in connection with the provision of counseling  
15 service under this chapter.

16 **§ 27114. Veterans assistance and services program**

17 (a) IN GENERAL.—A small business development center may apply for a  
18 grant under this section to carry out a veterans assistance and services pro-  
19 gram.

20 (b) ELEMENTS OF PROGRAM.—Under a program carried out with a grant  
21 under this subsection, a small business development center shall—

22 (1) create a marketing campaign to promote awareness and edu-  
23 cation of the services of the small business development center that are  
24 available to veterans, and to target the campaign toward veterans, serv-  
25 ice-disabled veterans, military units, Federal agencies, and veterans or-  
26 ganizations;

27 (2) use technology-assisted online counseling and distance learning  
28 technology to overcome the impediments to entrepreneurship faced by  
29 veterans and members of the Armed Forces; and

30 (3) increase coordination among organizations that assist veterans,  
31 including by establishing virtual integration of service providers and of-  
32 ferings for a one-stop point of contact for veterans who are entre-  
33 preneurs or owners of small business concerns.

34 (c) AMOUNT OF GRANTS.—A grant under this section shall be for not less  
35 than \$75,000 and not more than \$250,000.

36 (d) FUNDING.—Subject to amounts approved in advance in appropria-  
37 tions Acts, the Administration may make grants or enter into cooperative  
38 agreements to carry out this section.

**DIVISION J—WOMEN’S BUSINESS CENTER  
PROGRAM**

**CHAPTER 273—WOMEN’S BUSINESS CENTER PROGRAM**

Sec.

- 27301. Definitions.
- 27302. Financial assistance.
- 27303. Conditions of participation.
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- 27306. Criteria.
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- 27309. Continued funding for women’s business centers.
- 27310. Privacy requirements.
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**§ 27301. Definitions**

In this chapter:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of the Office of Women’s Business Ownership.

(2) PRIVATE NONPROFIT ORGANIZATION.—The term “private nonprofit organization” means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Code (26 U.S.C. 501(a)).

(3) WOMEN’S BUSINESS CENTER SITE.—The term “women’s business center site” means the location of—

(A) a women’s business center; or

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

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

(ii) the services of which are targeted to women; and

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

**§ 27302. Financial assistance**

(a) IN GENERAL.—The Administrator may provide financial assistance to a private nonprofit organization to conduct a 5-year project for the benefit of small business concerns owned and controlled by women.

(b) FORMS OF ASSISTANCE.—A project under subsection (a) shall provide—

(1) assistance in matters relating to financing, including training and counseling in—

- 1 (A) how to apply for and secure business credit and investment  
 2 capital;  
 3 (B) preparing and presenting financial statements; and  
 4 (C) managing cash flow and other financial operations of a busi-  
 5 ness concern;  
 6 (2) management assistance, including training and counseling in how  
 7 to plan, organize, staff, direct, and control each major activity and  
 8 function of a small business concern; and  
 9 (3) marketing assistance, including training and counseling in—  
 10 (A) identifying and segmenting domestic and international mar-  
 11 ket opportunities;  
 12 (B) preparing and executing marketing plans;  
 13 (C) developing pricing strategies;  
 14 (D) locating contract opportunities;  
 15 (E) negotiating contracts; and  
 16 (F) using varying public relations and advertising techniques.

17 (e) APPROPRIATIONS.—The authority of the Administrator to agree to  
 18 provide financial assistance shall be in effect for each fiscal year only to the  
 19 extent and in the amounts as are provided in advance in appropriations  
 20 Acts.

21 **§ 27303. Conditions of participation**

22 (a) NON-FEDERAL CONTRIBUTIONS.—As a condition of receiving finan-  
 23 cial assistance under this chapter, a recipient organization shall agree to ob-  
 24 tain, after its application has been approved and notice of award has been  
 25 issued, cash contributions from non-Federal sources as follows:

26 (1) In the first and second years, one non-Federal dollar for each  
 27 2 Federal dollars.

28 (2) In the third, fourth, and fifth years, one non-Federal dollar for  
 29 each Federal dollar.

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

34 (c) FORM OF FEDERAL CONTRIBUTIONS.—

35 (1) IN GENERAL.—Financial assistance under this chapter—

36 (A) may be made by grant, contract, or cooperative agreement;  
 37 and

38 (B) may be provided—

39 (i) in a lump sum or in installments; and

40 (ii) in advance or by reimbursement.

1           (2) PARTIAL DISBURSEMENT BEFORE NON-FEDERAL FUNDS ARE OB-  
2           TAINED.—The Administrator may disburse up to 25 percent of each  
3           year’s Federal share awarded to a recipient organization after notice  
4           of the award has been issued and before the non-Federal sector match-  
5           ing funds are obtained.

6           (3) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If a recipient of  
7           assistance fails to obtain the required non-Federal contribution during  
8           a project—

9                 (A) the recipient shall not be eligible thereafter for advance dis-  
10                bursements—

11                         (i) during the remainder of that project; or

12                         (ii) for any other project for which the recipient is or may  
13                         be funded by the Administrator; and

14                 (B) before approving assistance to the recipient for any other  
15                 project, the Administrator shall—

16                         (i) specifically determine whether the Administrator be-  
17                         lieves that the recipient will be able to obtain the requisite  
18                         non-Federal funding; and

19                         (ii) make a written finding stating the reasons for making  
20                         the determination.

21           **§ 27304. Contract authority**

22                 (a) IN GENERAL.—A women’s business center may enter into a contract  
23                 with a Federal agency to provide specific assistance to women and other un-  
24                 derserved small business concerns.

25                 (b) LIMITATION.—Performance of a contract under subsection (a) should  
26                 not hinder a women’s business center in carrying out the terms of the grant,  
27                 contract, or cooperative agreement received by the women’s business center  
28                 from the Administrator.

29           **§ 27305. 5-year period**

30                 (a) SUBMISSION OF PLAN.—An organization that applies for financial as-  
31                 sistance under this chapter initially shall submit a 5-year plan to the Ad-  
32                 ministrator on proposed fundraising and training activities.

33                 (b) ASSISTANCE PERIOD.—An organization may receive financial assist-  
34                 ance under this chapter for any one women’s business center site for a max-  
35                 imum of 5 years.

36           **§ 27306. Criteria**

37                 (a) IN GENERAL.—The Administrator shall evaluate and rank applicants  
38                 in accordance with predetermined selection criteria that shall be stated in  
39                 terms of relative importance.

1 (b) AVAILABILITY.—The criteria and their relative importance shall be  
 2 made publicly available and stated in each solicitation for applications made  
 3 by the Administrator.

4 (c) CRITERIA INCLUDED.—The criteria shall include—

5 (1) the experience of the applicant in conducting programs or ongo-  
 6 ing efforts designed to impart or upgrade the business skills of women  
 7 business owners or potential owners;

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

10 (3) the ability of the applicant to provide training and services to  
 11 a representative number of women who are both socially and economi-  
 12 cally disadvantaged; and

13 (4) the location for the women’s business center site proposed by the  
 14 applicant.

15 **§ 27307. Program examination**

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

17 (1) conduct an annual programmatic and financial examination of  
 18 each women’s business center under which a women’s business center  
 19 shall provide to the Administrator—

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

22 (B)(i) documentation regarding the amount of matching assist-  
 23 ance from non-Federal sources obtained and expended by the  
 24 women’s business center during the preceding year to meet the re-  
 25 quirements of section 27303 of this title; and

26 (ii) with respect to any in-kind contributions described in sec-  
 27 tion 27303(b) of this title that were used to satisfy the require-  
 28 ments of section 27303 of this title, verification of the existence  
 29 and valuation of those contributions; and

30 (2) analyze the results of each such examination and, based on that  
 31 analysis, make a determination regarding the programmatic and finan-  
 32 cial viability of each women’s business center.

33 (b) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to  
 34 award a sustainability grant or renew financial assistance to a women’s  
 35 business center, the Administrator—

36 (1) shall consider the results of the most recent examination of the  
 37 women’s business center under subsection (a); and

38 (2) may withhold the award or renewal if the Administration deter-  
 39 mines that—

1 (A)(i) the women’s business center has failed to provide any in-  
 2 formation required to be provided under subparagraph (A) or (B)  
 3 of subsection (a)(1); or

4 (ii) the information provided by the women’s business center is  
 5 inadequate; or

6 (B)(i) the women’s business center has failed to provide any in-  
 7 formation required to be provided by the women’s business center  
 8 for purposes of the report of the Administrator under section  
 9 10711 of this title; or

10 (ii) the information provided by the women’s business center is  
 11 inadequate.

12 **§ 27308. Suspension, termination, or failure to renew or ex-**  
 13 **tend financial assistance**

14 After the Administrator agrees to provide financial assistance to an appli-  
 15 cant under this chapter, the Administrator shall not suspend, terminate, or  
 16 fail to renew or extend the financial assistance unless the Administrator—

17 (1) provides the applicant with written notification stating the rea-  
 18 sons for suspension, termination, or failure to renew or extend; and

19 (2) affords the applicant an opportunity for a hearing, appeal, or  
 20 other administrative proceeding under chapter 5 of title 5.

21 **§ 27309. Continued funding for women’s business centers**

22 (a) IN GENERAL.—A nonprofit organization described in subsection (b)  
 23 shall be eligible to receive, subject to subsection (c), a 3-year grant under  
 24 this subsection.

25 (b) APPLICABILITY.—A nonprofit organization described in this sub-  
 26 section is a nonprofit organization that has received funding under section  
 27 27302 of this title.

28 (c) APPLICATION AND APPROVAL CRITERIA.—

29 (1) CRITERIA.—Subject to paragraph (2), the Administrator shall  
 30 develop and publish criteria for the consideration and approval of appli-  
 31 cations by nonprofit organizations under this section.

32 (2) CONTENTS.—Except as otherwise provided in this section, the  
 33 conditions for participation in the grant program under this section  
 34 shall be the same as the conditions for participation in the program  
 35 under section 29(l) of the Small Business Act (15 U.S.C. 656(l)) (as  
 36 in effect on May 25, 2007).

37 (3) NOTIFICATION.—Not later than 60 days after the date of the  
 38 deadline to submit applications for each fiscal year, the Administrator  
 39 shall approve or deny any application under this section and notify the  
 40 applicant for each such application.

41 (d) AWARD OF GRANTS.—

1 (1) IN GENERAL.—Subject to the availability of appropriations, the  
 2 Administrator shall make a grant for the Federal share of the cost of  
 3 activities described in the application to each applicant approved under  
 4 this section.

5 (2) AMOUNT.—A grant under this section shall be for not more than  
 6 \$150,000 for each year of the grant.

7 (3) FEDERAL SHARE.—The Federal share of the cost of activities  
 8 funded under this section shall be not more than 50 percent.

9 (4) PRIORITY.—In allocating funds made available for grants under  
 10 this chapter, the Administrator shall give applications under this sec-  
 11 tion priority over first-time applications under 27302 of this title.

12 (e) RENEWAL.—

13 (1) IN GENERAL.—The Administrator may renew a grant under this  
 14 section for additional 3-year periods, if the nonprofit organization sub-  
 15 mits an application for renewal at such time, in such manner, and ac-  
 16 companied by such information as the Administrator may establish.

17 (2) UNLIMITED RENEWALS.—There shall be no limitation on the  
 18 number of times that a grant may be renewed under paragraph (1).

19 **§ 27310. Privacy requirements**

20 (a) IN GENERAL.—A women’s business center may not disclose the name,  
 21 address, or telephone number of any individual or small business concern  
 22 receiving assistance under this chapter without the consent of the individual  
 23 or small business concern, unless—

24 (1) the Administrator is ordered to make such a disclosure by a  
 25 court in any civil or criminal enforcement action initiated by a Federal  
 26 agency or State agency; or

27 (2) the Administrator considers such a disclosure to be necessary for  
 28 the purpose of conducting a financial audit of a women’s business cen-  
 29 ter, but a disclosure under this paragraph shall be limited to the infor-  
 30 mation necessary for the audit.

31 (b) USE OF INFORMATION BY THE ADMINISTRATOR.—This section does  
 32 not—

33 (1) restrict access by the Administrator to program activity data; or

34 (2) preclude the Administrator from using client information (other  
 35 than the information described in paragraph (1)) to conduct client sur-  
 36 veys.

37 (c) REGULATIONS.—The Administrator shall issue regulations to establish  
 38 standards for requiring disclosures during a financial audit under subsection  
 39 (a)(2).



1 **§ 27311. Expedited acquisition**

2 Notwithstanding any other provision of law, the Administrator, acting  
3 through the Assistant Administrator, may use such expedited acquisition  
4 methods as the Administrator determines to be appropriate to carry out this  
5 chapter, except that the Administrator shall ensure that all small business  
6 sources are provided a reasonable opportunity to submit proposals.

7 **DIVISION K—VETERANS AND RESERVISTS**

8 **CHAPTER 275—VETERANS AND RESERVISTS**

Sec.

- 27501. Definitions.
- 27502. Veterans business development interagency task force.
- 27503. Advisory Committee on Veterans Business Affairs.
- 27504. Participation in transition assistance program workshops.
- 27505. Women veterans business training
- 27506. Information collection.
- 27507. Entrepreneurial training, counseling, and management assistance.
- 27508. Outreach.
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- 27510. Memorandum of understanding with the Secretary of Veterans Affairs and the Association.
- 27511. Dissemination of information.
- 27512. Memorandum of understanding with the Secretary of Labor and the Secretary of Veterans Affairs.
- 27513. Data collection.
- 27514. National Veterans Business Development Corporation.
- 27515. Relief from time limitations.

9 **§ 27501. Definitions**

10 In this chapter:

11 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Administrator” means the Associate Administrator for Veterans Business Development under section 10304(b) of this title.

12 (2) ADVISORY COMMITTEE.—The term “Advisory Committee” means  
13 the Veterans Business Development Advisory Committee established  
14 under section 27503.

15 (3) CORPORATION.—The term “Corporation” means the National  
16 Veterans Business Development Corporation established under section  
17 27514.

18 (4) INTERAGENCY TASK FORCE.—The term “Interagency Task  
19 Force” means the veterans business development interagency task force  
20 established under section 27502.

21 **§ 27502. Veterans business development interagency task**  
22 **force**

23 (a) ESTABLISHMENT.—The President shall establish an interagency task  
24 force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of  
25 the pre-established Federal contracting goals for, small business concerns  
26 owned and controlled by service-disabled veterans and small business concerns  
27 owned and controlled by veterans.  
28  
29  
30

1 (b) MEMBERSHIP.—The members of the Interagency Task Force shall in-  
2 clude—

3 (1) the Administrator, who shall serve as chairperson of the Inter-  
4 agency Task Force;

5 (2) a senior level representative from—

6 (A) the Department of Veterans Affairs;

7 (B) the Department of Defense;

8 (C) the Administration (in addition to the Administrator);

9 (D) the Department of Labor;

10 (E) the Department of the Treasury;

11 (F) the General Services Administration;

12 (G) the Office of Management and Budget; and

13 (3) 4 representatives from a veterans service organization or military  
14 organization or association, selected by the President.

15 (c) DUTIES.—The Interagency Task Force shall—

16 (1) consult regularly with veterans service organizations and military  
17 organizations in performing the duties of the Interagency Task Force;  
18 and

19 (2) coordinate administrative and regulatory activities and develop  
20 proposals relating to—

21 (A) improving capital access and capacity of small business con-  
22 cerns owned and controlled by service-disabled veterans and small  
23 business concerns owned and controlled by veterans through loans,  
24 surety bonding, and franchising;

25 (B) ensuring achievement of the pre-established Federal con-  
26 tracting goals for small business concerns owned and controlled by  
27 service-disabled veterans and small business concerns owned and  
28 controlled by veterans through expanded mentor-protégé assistance  
29 and matching such small business concerns with contracting op-  
30 portunities;

31 (C) increasing the integrity of certifications of status as a small  
32 business concern owned and controlled by service-disabled veterans  
33 or a small business concern owned and controlled by veterans;

34 (D) reducing paperwork and administrative burdens on veterans  
35 in accessing business development and entrepreneurship opportuni-  
36 ties;

37 (E) increasing and improving training and counseling services  
38 provided to small business concerns owned and controlled by vet-  
39 erans; and

40 (F) making other improvements relating to the support for vet-  
41 erans business development by the Federal Government.

**§ 27503. Advisory Committee on Veterans Business Affairs**

(a) IN GENERAL.—There is established an advisory committee to be known as the Advisory Committee on Veterans Business Affairs, which shall serve as an independent source of advice and policy recommendations to—

- (1) the Administrator;
- (2) the Associate Administrator;
- (3) Congress;
- (4) the President; and
- (5) other United States policymakers.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Committee shall be composed of 15 members appointed by the Administrator, of whom—

(A) 8 shall be veterans who are owners of small business concerns; and

(B) 7 shall be representatives of veterans organizations.

(2) POLITICAL AFFILIATION.—Not more than 8 members of the Committee shall be of the same political party as the President.

(3) PROHIBITION OF FEDERAL EMPLOYMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no member of the Advisory Committee may serve as an officer or employee of the United States.

(B) EXCEPTION.—A member of the Advisory Committee who accepts a position as an officer or employee of the United States after the date of the member's appointment to the Advisory Committee may continue to serve on the Advisory Committee for not more than 30 days after accepting the position.

(4) TERM OF SERVICE.—THE TERM OF SERVICE OF A MEMBER OF THE ADVISORY COMMITTEE SHALL BE 3 YEARS.

(5) VACANCIES.—The Administrator shall fill any vacancies on the membership of the Advisory Committee not later than 30 days after the date on which the vacancy occurs.

(6) CHAIRPERSON.—

(A) IN GENERAL.—The members of the Advisory Committee shall elect one of the members to be Chairperson of the Advisory Committee.

(B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in the office of the Chairperson of the Advisory Committee shall be filled by the Advisory Committee at the first meeting of the Advisory Committee following the date on which the vacancy occurs.

(c) DUTIES.—The duties of the Advisory Committee shall be to—

1 (1) review, coordinate, and monitor plans and programs, developed  
2 in the public and private sectors, that affect the ability of small busi-  
3 ness concerns owned and controlled by veterans to obtain capital and  
4 credit and to access markets;

5 (2) promote the collection of business information and survey data  
6 as they relate to veterans and small business concerns owned and con-  
7 trolled by veterans;

8 (3) monitor and promote plans, programs, and operations of Federal  
9 agencies that may contribute to the formation and growth of small  
10 business concerns owned and controlled by veterans;

11 (4) develop and promote initiatives, policies, programs, and plans de-  
12 signed to foster small business concerns owned and controlled by vet-  
13 erans; and

14 (5) in cooperation with the Corporation, develop a comprehensive  
15 plan, to be updated annually, for joint public-private sector efforts to  
16 facilitate growth and development of small business concerns owned  
17 and controlled by veterans.

18 (d) POWERS.—

19 (1) HEARINGS.—Subject to subsection (e), the Advisory Committee  
20 may hold such hearings, sit and act at such times and places, take such  
21 testimony, and receive such evidence as the Advisory Committee con-  
22 siders advisable to carry out its duties.

23 (2) INFORMATION FROM FEDERAL AGENCIES.—On request of the  
24 Chairperson of the Advisory Committee, the head of any Federal agen-  
25 cy or the Government Accountability Office shall furnish such informa-  
26 tion to the Advisory Committee as the Advisory Committee considers  
27 to be necessary to carry out its duties.

28 (3) USE OF MAILS.—The Advisory Committee may use the United  
29 States mails in the same manner and under the same conditions as  
30 other Federal agencies.

31 (4) GIFTS.—The Advisory Committee may accept, use, and dispose  
32 of gifts or donations of services or property.

33 (e) MEETINGS.—

34 (1) IN GENERAL.—The Advisory Committee shall meet, not less than  
35 3 times per year, at the call of the Chairperson or at the request of  
36 the Administrator.

37 (2) LOCATION.—Each meeting of the full Advisory Committee shall  
38 be held at the headquarters of the Small Business Administration in  
39 Washington, District of Columbia. The Administrator shall provide  
40 suitable meeting facilities and such administrative support as is nec-  
41 essary for each full meeting of the Advisory Committee.



- 1 (A) vocational and technical education;  
2 (B) general business skills, such as marketing and accounting;  
3 and  
4 (C) business assistance programs targeted to women veterans;  
5 and  
6 (2) disseminate the information compiled under paragraph (1)  
7 through veteran business outreach centers and women's business cen-  
8 ters.

9 **§ 27506. Information collection**

10 (a) IDENTIFICATION.—The Secretary of Veterans Affairs, in consultation  
11 with the Assistant Secretary for Veterans' Employment and Training and  
12 the Administrator, shall engage in efforts each year to identify small busi-  
13 ness concerns owned and controlled by disabled veterans in the United  
14 States.

15 (b) PROVISION OF INFORMATION.—The Secretary of Veterans Affairs  
16 shall inform each small business concern identified under this section that  
17 information on Federal procurement is available from the Administrator.

18 **§ 27507. Entrepreneurial training, counseling, and manage-**  
19 **ment assistance**

20 The Administrator shall take such actions as are necessary to ensure that  
21 small business concerns owned and controlled by disabled veterans have ac-  
22 cess to programs established under this subtitle that provide entrepreneurial  
23 training, business development assistance, counseling, and management as-  
24 sistance to small business concerns, including, among others, the small busi-  
25 ness development center program and the SCORE program.

26 **§ 27508. Outreach**

27 (a) IN GENERAL.—The Administrator, the Secretary of Veterans Affairs,  
28 and the Assistant Secretary of Labor for Veterans' Employment and Train-  
29 ing shall develop and implement a program of comprehensive outreach to  
30 assist disabled veterans.

31 (b) ACTIVITIES.—The program under subsection (a) shall include busi-  
32 ness training and management assistance, employment and relocation coun-  
33 seling, and dissemination of information on veterans' benefits and veterans'  
34 entitlements.

35 **§ 27509. Memorandum of understanding with the SCORE**

36 (a) IN GENERAL.—The Administrator shall enter into a memorandum of  
37 understanding with SCORE to provide for—

- 38 (1) the appointment by SCORE in its national office of an individual  
39 to act as National Veterans Business Coordinator, whose duties shall  
40 relate exclusively to veterans business matters, and who shall be re-  
41 sponsible for the establishment and administration of a program to co-

1         ordinate counseling and training regarding entrepreneurship to vet-  
2         erans through the chapters of SCORE throughout the United States;

3             (2) the provision of assistance by SCORE in maintaining a toll-free  
4         telephone number and an internet website to provide access for vet-  
5         erans to information about the counseling and training regarding entre-  
6         preneurship available to veterans through SCORE; and

7             (3) the collection of statistics concerning services provided by  
8         SCORE to service-disabled veterans and other veterans for inclusion in  
9         each annual report published by the Administrator under section 10713  
10         of this title.

11         (b) RESOURCES.—The Administrator shall provide SCORE such re-  
12         sources as the Administrator determines to be necessary for SCORE to  
13         carry out the requirements of the memorandum of understanding specified  
14         under subsection (a).

15         **§ 27510. Memorandum of understanding with the Secretary**  
16                 **of Veterans Affairs and the Association**

17         (a) IN GENERAL.—The Secretary of Veterans Affairs, the Administrator,  
18         and the head of the Association shall enter into a memorandum of under-  
19         standing with respect to entrepreneurial assistance to service-disabled vet-  
20         erans and other veterans through small business development centers and  
21         facilities of the Department of Veterans Affairs.

22         (b) FORMS OF ASSISTANCE.—Assistance provided under the memo-  
23         randum of understanding shall include—

24             (1) conducting of studies and research, and the distribution of infor-  
25         mation generated by such studies and research, on the formation, man-  
26         agement, financing, marketing, and operation of small business con-  
27         cerns by veterans;

28             (2) provision of training and counseling to veterans concerning the  
29         formation, management, financing, marketing, and operation of small  
30         business concerns;

31             (3) provision of management and technical assistance to the owners  
32         and operators of small business concerns regarding international mar-  
33         kets, the promotion of exports, and the transfer of technology;

34             (4) provision of assistance and information to veterans regarding  
35         procurement opportunities with Federal, State, and local agencies, es-  
36         pecially such agencies funded in whole or in part with Federal funds;

37             (5) establishment of an information clearinghouse to collect and dis-  
38         tribute information, including by electronic means, on the assistance  
39         programs of Federal, State, and local governments, and of the private  
40         sector, including information on office locations, key personnel, tele-

1 phone numbers, mail and electronic addresses, and contracting and  
2 subcontracting opportunities;

3 (6) provision of internet or other distance learning academic instruc-  
4 tion for veterans in business subjects, including accounting, marketing,  
5 and business fundamentals; and

6 (7) compilation of a list of small business concerns owned and con-  
7 trolled by service-disabled veterans that provide products or services  
8 that could be procured by the United States, and delivery of the list  
9 to each Federal agency.

10 (c) LIST OF SMALL BUSINESS CONCERNS.—The list described in sub-  
11 section (b)(7)—

12 (1) shall be delivered in hard copy and electronic form; and

13 (2) shall include the name and address of each small business con-  
14 cern owned and controlled by service-disabled veterans and the prod-  
15 ucts or services that it provides.

#### 16 **§ 27511. Dissemination of information**

17 Each fiscal year, the Secretary of Veterans Affairs shall—

18 (1) in consultation with the Assistant Secretary of Labor for Vet-  
19 erans' Employment and Training and the Administrator, identify small  
20 business concerns owned and controlled by veterans in the United  
21 States; and

22 (2) inform each small business concern owned and controlled by vet-  
23 erans identified under paragraph (1) that information on Federal pro-  
24 curement is available from the Administrator, as provided in section  
25 24115(b) of this title.

#### 26 **§ 27512. Memorandum of understanding with the Secretary 27 of Labor and the Secretary of Veterans Affairs**

28 (a) IN GENERAL.—The Secretary of Labor, the Secretary of Veterans Af-  
29 fairs, and the Administrator shall enter into a memorandum of under-  
30 standing to provide for coordination of vocational rehabilitation services,  
31 technical and managerial assistance, and financial assistance to veterans  
32 (including service-disabled veterans) seeking to employ themselves by form-  
33 ing or expanding small business concerns.

34 (b) CONTENTS.—The memorandum of understanding shall include rec-  
35 ommendations for expanding existing programs or establishing new pro-  
36 grams to provide services described in subsection (a) or assistance to vet-  
37 erans (including service-disabled veterans).

#### 38 **§ 27513. Data collection**

39 The Federal Procurement Data System described in section 6(d)(4)(A) of  
40 the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A))  
41 shall collect data regarding the percentage and dollar value of prime con-



1 tracts and subcontracts awarded to small business concerns owned and con-  
2 trolled by veterans (including small business concerns owned and controlled  
3 by service-disabled veterans).

4 **§ 27514. National Veterans Business Development Corpora-**  
5 **tion**

6 (a) DEFINITIONS.—In this section:

7 (1) ADVISORY BOARD.—The term “Advisory Board” means the Pro-  
8 fessional Certification Advisory Board established under subsection (i).

9 (2) BOARD OF DIRECTORS.—The term “Board of Directors” means  
10 the board of directors of the Corporation.

11 (3) CORPORATION.—The term “Corporation” means the National  
12 Veterans Business Development Corporation established by subsection  
13 (b).

14 (b) ESTABLISHMENT.—

15 (1) IN GENERAL.—There is established a federally chartered cor-  
16 poration to be known as the National Veterans Business Development  
17 Corporation, which shall be incorporated under the laws of the District  
18 of Columbia and which shall have the powers granted in this section.

19 (2) STATUS.—Notwithstanding any other provision of law, the Cor-  
20 poration is a private entity and not an agency, instrumentality, author-  
21 ity, entity, or establishment of the United States Government.

22 (c) PURPOSES OF THE CORPORATION.—The purposes of the Corporation  
23 shall be—

24 (1) to expand the provision of and improve access to technical assist-  
25 ance regarding entrepreneurship for the Nation’s veterans; and

26 (2) to assist veterans with the formation and expansion of small  
27 business concerns by working with and organizing public and private  
28 resources, including those of—

29 (A) the Administration;

30 (B) the Department of Veterans Affairs, Department of Labor,  
31 Department of Commerce, and Department of Defense;

32 (C) SCORE;

33 (D) small business development centers; and

34 (E) the business development staffs of each Federal agency.

35 (d) BOARD OF DIRECTORS.—

36 (1) IN GENERAL.—The management of the Corporation shall be  
37 vested in a Board of Directors composed of 9 voting members and 3  
38 nonvoting ex officio members.

39 (2) APPOINTMENT OF VOTING MEMBERS.—The President shall, after  
40 considering recommendations proposed by the Chairmen and Ranking  
41 Members of the Committee on Small Business and Entrepreneurship

1 and Committee on Veterans Affairs of the Senate and the Committee  
2 on Small Business and Committee on Veterans Affairs of the House  
3 of Representatives, appoint United States citizens to be voting mem-  
4 bers of the Board of Directors, not more than 5 of whom shall be mem-  
5 bers of the same political party.

6 (3) EX OFFICIO MEMBERS.—The Administrator, the Secretary of  
7 Defense, and the Secretary of Veterans Affairs shall serve as the non-  
8 voting ex officio members of the Board of Directors.

9 (4) CHAIRPERSON.—The voting members of the Board of Directors  
10 shall elect one such member to serve as chairperson of the Board of  
11 Directors for a term of 2 years.

12 (5) TERMS OF VOTING MEMBERS.—

13 (A) IN GENERAL.—A voting member of the Board of Directors  
14 shall serve a term of 6 years.

15 (B) UNEXPIRED TERMS.—A member of the Board of Directors  
16 appointed to fill a vacancy occurring before the expiration of the  
17 term for which the member's predecessor was appointed shall be  
18 appointed only for the remainder of the term. A member may  
19 serve after the expiration of that member's term until a successor  
20 takes office.

21 (6) VACANCIES.—A vacancy on the Board of Directors shall be filled  
22 in the manner in which the original appointment was made. In the case  
23 of a vacancy in the office of the Administrator or the Secretary of Vet-  
24 erans Affairs, and pending the appointment of a successor, an acting  
25 appointee for the vacancy may serve as an ex officio member.

26 (7) INELIGIBILITY FOR OTHER OFFICES.—No voting member of the  
27 Board of Directors may be an officer or employee of the United States  
28 while serving as a member of the Board of Directors or during the 2-  
29 year period preceding that service.

30 (8) FAIRNESS, IMPARTIALITY, AND NONDISCRIMINATION.—The  
31 Board of Directors shall administer the affairs of the Corporation fair-  
32 ly, impartially, and without discrimination.

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

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

38 (e) CORPORATE POWERS.—The Corporation shall have the authority—

39 (1) to adopt and use a corporate seal;

40 (2) to have succession until dissolved by Act of Congress;

41 (3) to make contracts or grants;

1 (4) to sue and be sued and to file and defend against lawsuits in  
2 Federal or State court;

3 (5) to appoint, through the actions of the Board of Directors, offi-  
4 cers and employees of the Corporation, to define their duties and re-  
5 sponsibilities and fix their compensation, and to dismiss at will such  
6 officers or employees;

7 (6) to prescribe, through the actions of the Board of Directors, by-  
8 laws not inconsistent with Federal law and the law of the District of  
9 Columbia, regulating the manner in which its general business may be  
10 conducted and the manner in which the privileges granted to it by law  
11 may be exercised;

12 (7) to exercise, through the actions of the Board of Directors or duly  
13 authorized officers, all powers specifically granted by this section, and  
14 such incidental powers as are necessary;

15 (8) to solicit, receive, and disburse funds from private, Federal,  
16 State, and local organizations;

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

20 (10) to accept voluntary and uncompensated services; and

21 (11) to use the United States mails in the same manner and under  
22 the same conditions as the Federal agencies.

23 (f) CORPORATE FUNDS.—

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

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

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

31 (B) are in accordance with the purposes of the Corporation as  
32 specified in subsection (c).

33 (g) NETWORK OF INFORMATION AND ASSISTANCE CENTERS.—In car-  
34 rying out the purposes of the Corporation specified in subsection (c), the  
35 Corporation shall establish and maintain a network of information and as-  
36 sistance centers for use by veterans and the public.

37 (h) PROFESSIONAL CERTIFICATION ADVISORY BOARD.—

38 (1) IN GENERAL.—Acting through the Board of Directors, the Cor-  
39 poration shall establish a Professional Certification Advisory Board to  
40 create uniform guidelines and standards for the professional certifi-  
41 cation of members of the Armed Services to aid in their efficient and

1 orderly transition to civilian occupations and professions and to remove  
2 potential barriers in the areas of licensure and certification.

3 (2) MEMBERSHIP.—

4 (A) IN GENERAL.—The members of the Advisory Board—

5 (i) shall serve without compensation;

6 (ii) shall meet in the District of Columbia not less than  
7 quarterly; and

8 (iii) shall be appointed by the Board of Directors as pro-  
9 vided in subparagraphs (B) and (C).

10 (B) PRIVATE SECTOR MEMBERS.—The Board of Directors shall  
11 appoint not fewer than 7 members for terms of 2 years to rep-  
12 resent private sector organizations and associations, including the  
13 American Association of Community Colleges, the Society for  
14 Human Resource Managers, the Coalition for Professional Certifi-  
15 cation, the Council on Licensure and Enforcement, and the Amer-  
16 ican Legion.

17 (C) PUBLIC SECTOR MEMBERS.—The Board of Directors  
18 shall—

19 (i) invite public sector members to serve at the discretion  
20 of Federal agencies;

21 (ii) encourage the participation of the Under Secretary of  
22 Defense for Personnel and Readiness;

23 (iii) encourage the participation of two officers from each  
24 branch of the Armed Forces to represent the Training Com-  
25 mands of their branch; and

26 (iv) seek the participation and guidance of the Assistant  
27 Secretary of Labor for Veterans' Employment and Training.

28 (i) ANNUAL REPORTS.—On or before October 1 of each year, the Board  
29 of Directors shall submit to the President and Congress a report that—

30 (1) describes the activities and accomplishments of the Corporation  
31 for the preceding year;

32 (2) includes the Corporation's findings regarding the efforts of Fed-  
33 eral, State, and private organizations to assist veterans in the forma-  
34 tion and expansion of small business concerns; and

35 (3) includes any recommendations by the Corporation for the pro-  
36 motion of small business concerns owned and controlled by veterans.

37 **§ 27515. Relief from time limitations**

38 (a) IN GENERAL.—Any time limitation on any qualification, certification,  
39 or period of participation imposed under this subtitle or subtitle I on any  
40 program that is available to small business concerns shall be extended for  
41 a small business concern that—

1 (1) is owned and controlled by—

2 (A) a veteran who was called or ordered to active duty on or  
3 after September 11, 2001, under a provision of law specified in  
4 section 101(a)(13)(B) of title 10; or

5 (B) a service-disabled veteran who became such a veteran due  
6 to an injury or illness incurred or aggravated in the active mili-  
7 tary, naval, or air service during a period of active duty pursuant  
8 to a call or order to active duty on or after September 11, 2001,  
9 under a provision of law specified in section 101(a)(13)(B) of title  
10 10; and

11 (2) was subject to the time limitation during that period of active  
12 duty.

13 (b) DURATION.—On submission of proper documentation to the Adminis-  
14 trator, the extension of a time limitation under subsection (a) shall be equal  
15 to the period of time that the veteran who owned or controlled a small busi-  
16 ness concern was on active duty as described in subsection (a).

17 (c) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM  
18 ACT OF 1990.—Subsections (a) and (b) do not apply to any program subject  
19 to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

## 20 **DIVISION X—MISCELLANEOUS**

### 21 **CHAPTER 291—MISCELLANEOUS**

Sec.

51101. Management assistance for small business concerns affected by military operations.

51102. Business grants and cooperative agreements.

51103. Voluntary agreements and programs.

51104. Paul D. Coverdell drug-free workplace program.

#### 22 **§ 29101. Management assistance for small business concerns** 23 **affected by military operations**

24 (a) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this section,  
25 the term “period of military conflict” means—

26 (1) a period of war declared by Congress;

27 (2) a period of national emergency declared by Congress or by the  
28 President; or

29 (3) a period of a contingency operation (as defined in section 101(a)  
30 of title 10).

31 (b) ASSISTANCE.—The Administrator shall use, as appropriate, the entre-  
32 preneurial development and management assistance programs of the Admin-  
33 istration, including programs involving State or private sector partners, to  
34 provide business counseling and training to any small business concern ad-  
35 versely affected by the deployment of units of the Armed Forces of the  
36 United States in support of a period of military conflict.

1 **§ 29102. Business grants and cooperative agreements**

2 (a) IN GENERAL.—The Administrator may make grants to and enter into  
3 cooperative agreements with a coalition of private or public entities (or com-  
4 bination of private and public entities)—

5 (1) to expand business-to-business relationships between small busi-  
6 ness concerns and large business concerns; and

7 (2) to provide businesses, directly or indirectly, with online informa-  
8 tion and a database of companies that are interested in mentor-protégé  
9 programs or community-based, statewide, or local business development  
10 programs.

11 (b) MATCHING REQUIREMENT.—The Administrator may make a grant to  
12 a coalition of private entities under subsection (a) only if the coalition pro-  
13 vides for activities described in paragraph (1) or (2) of subsection (a) in  
14 an amount (in kind or in cash) equal to the grant amount.

15 **§ 29103. Voluntary agreements and programs**

16 (a) CONSULTATION.—The President may consult with representatives of  
17 small business concerns with a view to encouraging the making by small  
18 business concerns with the approval of the President of voluntary agree-  
19 ments and programs to further the objectives of this subtitle.

20 (b) EXEMPTION FROM CERTAIN LAWS.—

21 (1) IN GENERAL.—No act or omission to act pursuant to this sub-  
22 title that occurs while this subtitle is in effect, if requested by the  
23 President pursuant to a voluntary agreement or program approved  
24 under subsection (a) and determined by the President to be in the pub-  
25 lic interest as contributing to the national defense, shall be construed  
26 to be within the prohibitions of the antitrust laws or the Federal Trade  
27 Commission Act (15 U.S.C. 41 et seq.).

28 (2) REQUESTS.—A copy of a request intended to be within the cov-  
29 erage of this section, and any modification or withdrawal of such a re-  
30 quest—

31 (A) shall be furnished to the Attorney General and the Chair-  
32 man of the Federal Trade Commission when made; and

33 (B) shall be published in the Federal Register unless publication  
34 of the request would, in the opinion of the President, endanger the  
35 national security.

36 (c) DELEGATION OF AUTHORITY.—The authority granted in subsection  
37 (b) shall be delegated only—

38 (1) to an official who for the purpose of the delegation shall be re-  
39 quired to be appointed by the President by and with the advice and  
40 consent of the Senate;

1           (2) on the condition that the official consult with the Attorney Gen-  
2           eral and the Chairman of the Federal Trade Commission not less than  
3           10 days before making any request or finding under subsection (b);  
4           and

5           (3) on the condition that the official obtain the approval of the At-  
6           torney General to any request under subsection (b) before making the  
7           request.

8           (d) WITHDRAWAL OF REQUEST OR FINDING BY THE PRESIDENT OR OF  
9           APPROVAL BY THE ATTORNEY GENERAL.—On withdrawal of any request  
10          or finding under this section, or on withdrawal by the Attorney General of  
11          approval of the voluntary agreement or program on which the request or  
12          finding is based, this section shall not apply to any subsequent act, or omis-  
13          sion to act, by reason of the finding or request.

14          **§ 29104. Paul D. Coverdell drug-free workplace program**

15          (a) DEFINITIONS.—In this section:

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

18           (A) a written policy, including a clear statement of—

19           (i) expectations for workplace behavior;

20           (ii) prohibitions against reporting to work or working under  
21          the influence of illegal drugs or alcohol;

22           (iii) prohibitions against the use or possession of illegal  
23          drugs in the workplace; and

24           (iv) the consequences of violating those expectations and  
25          prohibitions;

26           (B)(i) drug and alcohol abuse prevention training for a total of  
27          not less than 2 hours for each employee; and

28           (ii) additional voluntary drug and alcohol abuse prevention  
29          training for employees who are parents;

30           (C)(i) testing of employees of a small business concern for ille-  
31          gal drugs, with analysis conducted by a drug testing laboratory  
32          certified by the Substance Abuse and Mental Health Services Ad-  
33          ministration, or approved by the College of American Pathologists  
34          for forensic drug testing; and

35           (ii) a review of each positive test result by a medical review offi-  
36          cer who is not—

37           (I) an employee of that small business concern; or

38           (II) an employee or agent of, or any person having a finan-  
39          cial interest in, the laboratory for which the illegal drug test  
40          results are reviewed;

1 (D) employee access to an employee assistance program, includ-  
 2 ing confidential assessment, referral, and short-term problem reso-  
 3 lution; and

4 (E) continuing alcohol and drug abuse prevention education.

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

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

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

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

12 (D)(i) the purpose of which is—

13 (I) to develop comprehensive drug-free workplace programs  
 14 or to supply drug-free workplace services; or

15 (II) to provide other forms of assistance and services to  
 16 small business concerns; or

17 (ii) that is eligible to receive a grant under chapter 2 of the Na-  
 18 tional Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

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

20 (A) an applicant for employment;

21 (B) an employee;

22 (C) a supervisor;

23 (D) a manager;

24 (E) an officer of a small business concern who is active in man-  
 25 agement of the small business concern; and

26 (F) an owner of a small business concern who is active in man-  
 27 agement of the small business concern.

28 (4) MEDICAL REVIEW OFFICER.—The term “medical review officer”  
 29 means a licensed physician with knowledge of substance abuse dis-  
 30 orders.

31 (b) ESTABLISHMENT.—

32 (1) IN GENERAL.—There is established a drug-free workplace dem-  
 33 onstration program, under which the Administrator may make grants  
 34 to, or enter into cooperative agreements or contracts with, eligible  
 35 intermediaries for the purpose of providing financial and technical as-  
 36 sistance to small business concerns seeking to establish a drug-free  
 37 workplace program.

38 (2) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition  
 39 to grants under paragraph (1), the Administrator may make grants to,  
 40 or enter into cooperative agreements or contracts with, any grantee for  
 41 the purpose of providing, in cooperation with one or more small busi-



1           ness development centers, technical assistance to small business con-  
2           cerns seeking to establish a drug-free workplace program.

3           (3) 2-YEAR GRANTS.—A grant made under this subsection shall be  
4           for a period of 2 years, subject to an annual performance review by  
5           the Administrator.

6           (c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTER-  
7           MEDIARIES.—

8           (1) TECHNICAL ASSISTANCE AND INFORMATION.—The Adminis-  
9           trator, after consultation with the Director of the Center for Substance  
10          Abuse and Prevention, shall provide technical assistance and informa-  
11          tion to each eligible intermediary under subsection (b) regarding the  
12          most effective practices in establishing and carrying out drug-free  
13          workplace programs.

14          (2) EVALUATION OF PROGRAM.—

15           (A) DATA COLLECTION AND ANALYSIS.—

16           (i) IN GENERAL.—An eligible intermediary receiving a  
17           grant under this section shall establish a system to collect  
18           and analyze information regarding the effectiveness of drug-  
19           free workplace programs established with assistance provided  
20           under this section through the intermediary, including infor-  
21           mation regarding any increase or decrease among employees  
22           in drug use, awareness of the adverse consequences of drug  
23           use, and absenteeism, injury, and disciplinary problems re-  
24           lated to drug use.

25           (ii) REQUIREMENTS.—The system shall conform to such  
26           requirements as the Administrator, after consultation with  
27           the Director of the Center for Substance Abuse and Preven-  
28           tion, may prescribe.

29           (iii) LIMITATION.—Not more than 5 percent of the amount  
30           of a grant made under subsection (b) shall be used by the eli-  
31           gible intermediary to carry out this paragraph.

32           (B) METHOD OF EVALUATION.—

33           (i) IN GENERAL.—The Administrator, after consultation  
34           with the Director of the Center for Substance Abuse and Pre-  
35           vention, shall provide technical assistance and guidance to  
36           each eligible intermediary receiving a grant under subsection  
37           (b) regarding the collection and analysis of information to  
38           evaluate the effectiveness of drug-free workplace programs es-  
39           tablished with assistance provided under this section, includ-  
40           ing the information referred to in paragraph (1).

(ii) FORMS OF ASSISTANCE.—Assistance under clause (i) shall include—

(I) the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the small business concern’s employees; and

(II) the identification of methods suitable for analyzing such information.

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

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

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

(e) EFFECT OF SECTION.—Nothing in this section requires an employer that attends a program offered by an eligible intermediary to contract for any service offered by the eligible intermediary.

**Subtitle III—Investment Division**  
**DIVISION A—GENERAL PROVISIONS**  
**CHAPTER 301—GENERAL PROVISIONS**

Sec.

30101. Definitions.

30102. Implementation of subtitle.

**§ 30101. Definitions**

In this subtitle:

(1) ARTICLES.—The term “articles”—

(A) with respect to an incorporated body, means the articles of incorporation if the incorporated body; and

(B) with respect to any other business entity, means the functional equivalent of the articles of incorporation of an incorporated body or other similar documents specified by the Administrator.

(2) EMPLOYEE WELFARE BENEFIT PLAN.—

(A) IN GENERAL.—The term “employee welfare benefit plan” has the meaning given the term in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

(B) INCLUSIONS.—The term “employee welfare benefit plan” includes any similar plan not covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) that has been established and that is maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees.

(3) ENERGY SAVING DEBENTURE.—The term “energy saving debenture” means a deferred interest debenture that—

- 1 (A) is issued at a discount;  
 2 (B) has a 5-year maturity or a 10-year maturity;  
 3 (C) requires no interest payment or annual charge for the first  
 4 5 years;  
 5 (D) is restricted to energy saving qualified investments; and  
 6 (E) is issued at no cost (as defined in section 502 of the Credit  
 7 Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing  
 8 and guaranteeing the debenture.

9 (4) ENERGY SAVING QUALIFIED INVESTMENT.—The term “energy  
 10 saving qualified investment” means an investment in a small business  
 11 concern that is primarily engaged in researching, manufacturing, devel-  
 12 oping, or providing products, goods, or services that reduce the use or  
 13 consumption of nonrenewable energy resources.

14 (5) LEVERAGE.—The term “leverage” includes—

- 15 (A) a debenture purchased or guaranteed by the Administrator;  
 16 (B) a participating security purchased or guaranteed by the Ad-  
 17 ministrator; and  
 18 (C) a preferred security outstanding as of October 1, 1995.

19 (6) LICENSE.—The term “license” means a license to operate as a  
 20 small business investment company issued by the Administrator to a  
 21 company under section 30302 of this title.

22 (7) LICENSEE.—

23 (A) IN GENERAL.—The term “licensee” means a company that  
 24 is issued a license.

25 (B) INCLUSION.—The term “licensee” includes a specialized  
 26 small business investment company.

27 (8) LIMITED LIABILITY COMPANY.—The term “limited liability com-  
 28 pany” means a business entity that is organized and operating in ac-  
 29 cordance with a State limited liability company statute approved by the  
 30 Administrator.

31 (9) LONG-TERM.—The term “long-term”, used in connection with  
 32 equity capital or loan funds invested in a small business concern or  
 33 smaller enterprise, means a period of time of not less than one year.

34 (10) LOW-INCOME GEOGRAPHIC AREA.—The term “low-income geo-  
 35 graphic area” means—

- 36 (A) a population census tract (or in the case of an area that  
 37 is not tracted for population census tracts, the equivalent county  
 38 division, as defined by the Bureau of the Census of the Depart-  
 39 ment of Commerce for purposes of defining poverty areas), if—

40 (i) the poverty rate for the population census tract is not  
 41 less than 20 percent;

1 (ii)(I) in the case of a population census tract that is lo-  
 2 cated within a metropolitan area, 50 percent or more of the  
 3 households in the population census tract have an income  
 4 equal to less than 60 percent of the area median gross in-  
 5 come; or

6 (II) in the case of a population census tract that is not lo-  
 7 cated within a metropolitan area, the median household in-  
 8 come for the census tract does not exceed 80 percent of the  
 9 statewide median household income; or

10 (iii) as determined by the Administrator based on objective  
 11 criteria, a substantial population of low-income individuals re-  
 12 side, an inadequate access to investment capital exists, or  
 13 other indications of economic distress exist in the population  
 14 census tract; or

15 (B) an area located within—

16 (i) a HUBZone;

17 (ii) an urban empowerment zone or urban enterprise com-  
 18 munity (as designated by the Secretary of Housing and  
 19 Urban Development); or

20 (iii) a rural empowerment zone or rural enterprise commu-  
 21 nity (as designated by the Secretary of Agriculture).

22 (11) MANAGEMENT OFFICIAL.—The term “management official”  
 23 means an officer, director, general partner, manager, employee, agent,  
 24 or other participant in the management or conduct of the affairs of a  
 25 licensee.

26 (12) MEMBER.—The term “member”, with respect to a licensee that  
 27 is a limited liability company, means—

28 (A) a holder of an ownership interest in the limited liability  
 29 company; or

30 (B) a person otherwise admitted to membership in the limited  
 31 liability company.

32 (13) PARTICIPATING SECURITY.—The term “participating security”  
 33 includes—

34 (A) preferred stock, a preferred limited partnership interest, or  
 35 a similar instrument; and

36 (B) a debenture under the terms of which interest is payable  
 37 only to the extent of earnings.

38 (14) PENSION PLAN.—

39 (A) IN GENERAL.—The term “pension plan” has the meaning  
 40 given the term in section 3 of the Employee Retirement Income  
 41 Security Act of 1974 (29 U.S.C. 1002).

1 (B) INCLUSIONS.—The term “pension plan” includes—

2 (i) a public or private pension or retirement plan subject  
3 to the Employee Retirement Income Security Act of 1974 (29  
4 U.S.C. 1001 et seq.); and

5 (ii) any similar plan not covered by that Act that is estab-  
6 lished and maintained by the Federal Government or any  
7 State or political subdivision, or any agency or instrumen-  
8 tality thereof, for the benefit of employees.

9 (15) PRIVATE CAPITAL.—

10 (A) IN GENERAL.—The term “private capital” means the sum  
11 of—

12 (i)(I) the paid-in capital and paid-in surplus of a corporate  
13 licensee;

14 (II) the contributed capital of the partners of a partnership  
15 licensee; or

16 (III) the equity investment of the members of a limited li-  
17 ability company licensee; and

18 (ii) subject to subparagraph (B), unfunded binding com-  
19 mitments, from investors that meet criteria established by the  
20 Administrator, to contribute capital to the licensee.

21 (B) LIMITATION.—An unfunded commitment described in sub-  
22 paragraph (A)(ii) may be counted as private capital for purposes  
23 of approval by the Administrator of a request for leverage, but le-  
24 verage shall not be funded based on such a commitment.

25 (C) EXCLUSIONS.—The term “private capital” does not in-  
26 clude—

27 (i) funds borrowed by a licensee from any source;

28 (ii) funds obtained through the issuance of leverage; or

29 (iii) funds obtained directly or indirectly from a Federal,  
30 State, or local government, or any government agency or in-  
31 strumentality, except for—

32 (I) funds obtained from the business revenues (exclud-  
33 ing any governmental appropriation) of a federally char-  
34 tered or government-sponsored corporation established  
35 before October 1, 1987;

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

38 (III) qualified nonprivate funds (if the investors of the  
39 qualified nonprivate funds do not control, directly or in-  
40 directly, the management, board of directors, general  
41 partners, or members of the licensee).

1           (16) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term  
2 “qualified HUBZone small business concern” has the meaning given  
3 the term in section 10101 of this title, except that the exception stated  
4 in paragraph (18)(B) of this section applies.

5           (17) QUALIFIED NONPRIVATE FUNDS.—The term “qualified nonpri-  
6 vate funds” means—

7           (A) funds directly or indirectly invested in an applicant or li-  
8 censee on or before August 16, 1982, by any Federal agency,  
9 other than the Administration, under a provision of law that ex-  
10 plicitly requires the inclusion of such funds in the definition of the  
11 term “private capital”;

12           (B) funds directly or indirectly invested in an applicant or li-  
13 censee by a Federal agency under a provision of law enacted after  
14 September 4, 1992, that explicitly requires the inclusion of those  
15 funds in the definition of the term “private capital”; and

16           (C) funds invested in an applicant or licensee by one or more  
17 State or local government entities (including any guarantee ex-  
18 tended by such an entity) in an aggregate amount that does not  
19 exceed 33 percent of the private capital of the applicant or li-  
20 censee.

21 (18) SMALL BUSINESS CONCERN.—

22           (A) IN GENERAL.—The term “small business concern” has the  
23 meaning given the term in section 10101 of this title, except as  
24 provided in subparagraph (B).

25           (B) EXCEPTION.—For purposes of this subtitle, in determining  
26 whether a business concern is a small business concern—

27           (i) an investment by a venture capital firm, investment  
28 company (including a small business investment company),  
29 employee welfare benefit plan, pension plan, trust, foundation,  
30 or endowment that is exempt from Federal income taxation—

31           (I) shall not cause a business concern to be considered  
32 not independently owned and operated regardless of the  
33 allocation of control during the investment period under  
34 any investment agreement between the business concern  
35 and the entity making the investment;

36           (II) shall be disregarded in determining whether a  
37 business concern satisfies size standards established  
38 under section 10101(70) of this title; and

39           (III) shall be disregarded in determining whether a  
40 small business concern is a smaller enterprise; and

(ii) in determining whether a business concern satisfies net income standards established under section 10101(70) of this title, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

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

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

(19) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(20) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(21) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term “small business concern owned and controlled by veterans” has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(22) SMALL BUSINESS INVESTMENT COMPANY.—The term “small business investment company” means a licensee.

(23) SMALLER ENTERPRISE.—

(A) IN GENERAL.—The term “smaller enterprise” means a small business concern that, together with its affiliates—

1 (i) has—

2 (I) a net financial worth of not more than \$6,000,000,  
3 as of the date on which assistance is provided under this  
4 subtitle to that small business concern; and

5 (II) an average net income, for the 2-year period pre-  
6 ceding the date on which assistance is provided under  
7 this subtitle to that small business concern, of not more  
8 than \$2,000,000, after Federal income taxes (excluding  
9 any carryover losses); or

10 (ii) satisfies the North American Industry Classification  
11 System size standards established by the Administrator for  
12 the industry in which the small business concern is primarily  
13 engaged.

14 (B) DETERMINATION OF NET INCOME.—For purposes of sub-  
15 paragraph (A)(i)(II), if a small business concern is not required  
16 by law to pay Federal income tax at the enterprise level, but is  
17 required to pass income through to the shareholders, partners,  
18 beneficiaries, or other equitable owners of the small business con-  
19 cern, the net income of the small business concern shall be deter-  
20 mined by deducting from the gross income of the small business  
21 concern—

22 (i) in the case of a small business concern that is required  
23 by law to pay State (and local, if any) income taxes at the  
24 enterprise level, the amount that is equal to the net income  
25 of the small business concern determined without regard to  
26 this clause, multiplied by the marginal Federal income tax  
27 rate that would apply if the small business concern were a  
28 corporation; or

29 (ii) in the case of a small business concern that is not re-  
30 quired by law to pay State (and local, if any) income taxes  
31 at the enterprise level, the amount that is equal to the sum  
32 of—

33 (I) the net income of the small business concern deter-  
34 mined without regard to this clause, multiplied by the  
35 marginal State income tax rate (or by the combined  
36 State and local income tax rates, as applicable) that  
37 would apply if the small business concern were a cor-  
38 poration; and

39 (II) the net income of the small business concern de-  
40 termined without regard to this clause, less any deduc-  
41 tion for State (and local) income taxes calculated under



1 subclause (I), multiplied by the marginal Federal income  
2 tax rate that would apply if the business concern were  
3 a corporation.

4 (24) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The  
5 term “specialized small business investment company” means a com-  
6 pany that—

7 (A) invests solely in small business concerns that contribute to  
8 a well-balanced national economy by facilitating ownership in  
9 small business concerns by persons whose participation in the free  
10 enterprise system is hampered because of social or economic dis-  
11 advantages;

12 (B) is organized or chartered under a State business or non-  
13 profit corporations statute or formed as a limited partnership; and

14 (C) was licensed under subsection (d) of section 301 of the  
15 Small Business Act (15 U.S.C. 681(d)), as in effect before Sep-  
16 tember 30, 1996.

17 (25) STATE.—The term “State” includes a State, the territories and  
18 possessions of the United States, Puerto Rico, and the District of Co-  
19 lumbia.

20 (26) THIRD PARTY DEBT.—The term “third party debt” means any  
21 indebtedness for borrowed money, other than indebtedness owed to the  
22 Administrator.

23 **§ 30102. Implementation of subtitle**

24 The Administrator—

25 (1) shall carry out this subtitle so as to improve and stimulate the  
26 national economy in general and the small business segment of the  
27 economy in particular by establishing a program to stimulate and sup-  
28 plement the flow of private equity capital and long-term loan funds  
29 that—

30 (A) small business concerns need for the sound financing of  
31 their business operations and for their growth, expansion, and  
32 modernization; and

33 (B) are not available in adequate supply; and

34 (2) in doing so—

35 (A) shall ensure the maximum participation of private financing  
36 sources;

37 (B) shall ensure that any financial assistance provided under  
38 this subtitle does not result in a substantial increase of unemploy-  
39 ment in any area of the country; and

40 (C) in the award of financial assistance under this subtitle,  
41 when practicable, shall accord priority to small business concerns

1           that lease or purchase equipment and supplies produced in the  
2           United States and encourage small business concerns that receive  
3           assistance under this subtitle to continue to lease or purchase  
4           equipment and supplies produced in the United States.

5           **DIVISION B—INVESTMENT PROGRAMS**  
6           **CHAPTER 303—SMALL BUSINESS INVESTMENT**  
7           **COMPANY PROGRAM**

Sec.

- 30301. Requirements for licensing.
- 30302. Licensing procedure.
- 30303. Financial institution investments.
- 30304. Borrowing power.
- 30305. Equity capital for small business concerns.
- 30306. Long-term loans to small business concerns.
- 30307. Limitation on amount of financing.
- 30308. Cooperation with banks and other investors or lenders.
- 30309. Advisory services; Federal Reserve Banks as depositories or fiscal agents; investment of funds.
- 30310. Nonliability of the United States.
- 30311. Certifications of eligibility.
- 30312. Interest rates.
- 30313. Conflicts of interest.
- 30314. Ineligibility of guaranteed obligations for purchase by Federal Financing Bank.
- 30315. Trust certificates.
- 30316. Regulations.
- 30317. Unlawful acts and omissions.
- 30318. Investigations; examinations; valuations.
- 30319. Revocation and suspension of licenses; cease and desist orders.
- 30320. Removal or suspension of, or prohibition of participation by, management officials.
- 30321. Direct civil enforcement actions.
- 30322. Jurisdiction; service of process.

8           **§ 30301. Requirements for licensing**

9           (a) IN GENERAL.—To receive or hold a license to operate as a small busi-  
10          ness investment company under this chapter, a company shall meet the re-  
11          quirements of this section.

12          (b) ORGANIZATION.—The company shall be an incorporated body, limited  
13          liability company, or limited partnership organized and chartered or other-  
14          wise existing under State law solely for the purpose of performing the func-  
15          tions and conducting the activities contemplated under this chapter.

16          (c) SUCCESSION.—The company—

17               (1) if it is an incorporated body, shall have succession for a period  
18               of not less than 30 years unless it is sooner dissolved by its share-  
19               holders; and

20               (2) if it is a limited partnership, shall have succession for a period  
21               of not less than 10 years.

22          (d) POWERS.—The company shall possess the powers reasonably nec-  
23          essary to perform the functions and conducting the activities contemplated  
24          under this chapter.

25          (e) AREA OF OPERATION.—The area in which the company is to conduct  
26          its operations, and the establishment of branch offices or agencies (if au-

1 thORIZED by the articles), shall be subject to the approval of the Adminis-  
 2 trator.

3 (f) ARTICLES.—

4 (1) IN GENERAL.—The articles of the company shall specify in gen-  
 5 eral terms—

6 (A) the purposes for which the company is formed;

7 (B) the name of the company;

8 (C) the area or areas in which its operations are to be carried  
 9 on;

10 (D) the place where its principal office is to be located; and

11 (E) the amount and classes of its shares of capital stock.

12 (2) OTHER PROVISIONS.—The articles of the company may contain  
 13 any other provisions not inconsistent with this chapter that the com-  
 14 pany may see fit to adopt for the regulation of its business and the  
 15 conduct of its affairs.

16 (3) APPROVAL.—The articles of the company and any amendments  
 17 to the articles adopted from time to time shall be subject to the ap-  
 18 proval of the Administrator.

19 (g) CAPITAL REQUIREMENTS.—

20 (1) IN GENERAL.—Except as provided in paragraph (2), the private  
 21 capital of the company shall be not less than—

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

23 (B) \$10,000,000, with respect to a company that seeks author-  
 24 ity to issue participating securities to be purchased or guaranteed  
 25 by the Administrator under this chapter.

26 (2) EXCEPTIONS.—

27 (A) NO UNREASONABLE RISK OF DEFAULT OR LOSS.—

28 (i) IN GENERAL.—The Administrator may, on a showing of  
 29 special circumstances and good cause, permit the private cap-  
 30 ital of a company described in paragraph (1)(B) to be less  
 31 than \$10,000,000, but not less than \$5,000,000, if the Ad-  
 32 ministrator determines that doing so would not create or oth-  
 33 erwise contribute to an unreasonable risk of default or loss  
 34 to the Federal Government.

35 (ii) COMPANIES LICENSED BEFORE SEPTEMBER 30, 1996.—  
 36 The Administrator may continue the licensing of a licensee li-  
 37 censed under subsection (c) or (d) of section 301 of the Small  
 38 Business Act (15 U.S.C. 681(c), (d)) before September 30,  
 39 1996, that does not meet the requirements of paragraph (1)  
 40 if—

1 (I) the licensee certifies in writing that not less than  
 2 50 percent of the aggregate dollar amount of its  
 3 financings will be provided to smaller enterprises; and

4 (II) the Administrator determines that doing so would  
 5 not create or otherwise contribute to an unreasonable  
 6 risk of default or loss to the Federal Government.

7 (B) VIABLE BUSINESS PLAN AND REASONABLE TIMETABLE.—

8 (i) IN GENERAL.—Notwithstanding any other provision of  
 9 this chapter, the Administrator may, on a showing of special  
 10 circumstances and good cause, issue a license with respect to  
 11 a company that would otherwise be issued a license, except  
 12 that the company does not satisfy the requirements of para-  
 13 graph (1), if the company—

14 (I) has private capital of not less than \$3,000,000;  
 15 and

16 (II) has a viable business plan reasonably projecting  
 17 profitable operations and a reasonable timetable for  
 18 achieving a level of private capital that satisfies the re-  
 19 quirements of paragraph (1).

20 (ii) LEVERAGE.—A company that is licensed pursuant to  
 21 the exception provided in clause (i) shall not be eligible to re-  
 22 ceive leverage as a licensee until the company satisfies the re-  
 23 quirements of paragraph (1).

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

26 (A) determine whether the private capital of the company is  
 27 adequate to ensure a reasonable prospect that the company will be  
 28 operated soundly and profitably and managed actively and pru-  
 29 dently in accordance with its articles;

30 (B) determine that the company, both prior to licensing and  
 31 prior to approving any request for financing, will be able to make  
 32 periodic payments on any debt of the company that is interest-  
 33 bearing; and

34 (C) take into consideration—

35 (i) the income that the company anticipates on its con-  
 36 templated investments;

37 (ii) the experience of the company's owners and managers;

38 (iii) the history of the company as an entity, if any; and

39 (iv) the company's financial resources.

40 (h) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure  
 41 that the management of a licensee licensed after September 30, 1996, is

1 sufficiently diversified from and unaffiliated with the ownership of the li-  
2 censee in a manner that ensures independence and objectivity in the finan-  
3 cial management and oversight of the investments and operations of the li-  
4 censee.

5 **§ 30302. Licensing procedure**

6 (a) SUBMISSION OF APPLICATION.—An applicant for a license to operate  
7 as a small business investment company under this chapter shall submit to  
8 the Administrator an application, in such form and including such docu-  
9 mentation as the Administrator may prescribe.

10 (b) STATUS.—Not later than 90 days after receipt by the Administrator  
11 of an application under this section, the Administrator shall provide the ap-  
12 plicant with a written report detailing the status of the application and any  
13 requirements remaining for completion of the application.

14 (c) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiv-  
15 ing a completed application submitted in accordance with this section (in-  
16 cluding such requirements as the Administrator may prescribe by regula-  
17 tion), the Administrator shall—

18 (1) approve the application and issue a license to the applicant if the  
19 requirements of this section are satisfied; or

20 (2) disapprove the application and notify the applicant in writing of  
21 the disapproval.

22 (d) MATTERS TO BE CONSIDERED.—In reviewing and processing an ap-  
23 plication under this section, the Administrator—

24 (1) shall determine whether—

25 (A) the applicant meets the requirements of subsections (g) and  
26 (h) of section 30301 of this title; and

27 (B) the management of the applicant is qualified and has the  
28 knowledge, experience, and capability necessary to comply with  
29 this chapter;

30 (2) shall take into consideration—

31 (A) the need for and availability of financing for small business  
32 concerns in the geographic area in which the applicant is to com-  
33 mence business;

34 (B) the general business reputation of the owners and manage-  
35 ment of the applicant; and

36 (C) the probability of successful operations of the applicant, in-  
37 cluding adequate profitability and financial soundness; and

38 (3) shall not take into consideration any projected shortage or un-  
39 availability of leverage.

40 (e) FEES.—

1 (1) IN GENERAL.—The Administrator may prescribe fees to be paid  
2 by an applicant for a license.

3 (2) USE OF AMOUNTS.—Fees collected under this subsection—

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

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

8 **§ 30303. Financial institution investments**

9 (a) CERTAIN BANKS.—Notwithstanding section 23A of the Federal Re-  
10 serve Act (12 U.S.C. 371e), a national bank, or a member bank of the Fed-  
11 eral Reserve System or nonmember insured bank to the extent permitted  
12 under applicable State law, may invest in one or more licensees, or in an  
13 entity established to invest solely in licensees, except that in no event shall  
14 the total amount of such investments of any such bank exceed 5 percent  
15 of the capital and surplus of the bank.

16 (b) FEDERAL SAVINGS ASSOCIATIONS.—Notwithstanding any other provi-  
17 sion of law, a Federal savings association may invest in one or more licens-  
18 ees, or in an entity established to invest solely in licensees, except that in  
19 no event shall the total amount of such investments by a Federal savings  
20 association exceed 5 percent of the capital and surplus of the Federal sav-  
21 ings association.

22 **§ 30304. Borrowing power**

23 (a) AUTHORITY TO ISSUE OBLIGATIONS.—A licensee shall have authority  
24 to borrow money and to issue its securities, promissory notes, or other obli-  
25 gations under such general conditions and subject to such limitations and  
26 regulations as the Administrator may prescribe.

27 (b) DEBENTURES AND PARTICIPATING SECURITIES.—

28 (1) AUTHORITY TO PURCHASE OR GUARANTEE.—To encourage the  
29 formation and growth of small business investment companies, the Ad-  
30 ministrator may, when authorized in an appropriation Act, purchase,  
31 or guarantee the timely payment of all principal and interest as sched-  
32 uled on, debentures or participating securities issued by a licensee.

33 (2) TERMS AND CONDITIONS.—A purchase or guarantee under para-  
34 graph (1) may be made on such terms and conditions as the Adminis-  
35 trator considers appropriate, under regulations prescribed by the Ad-  
36 ministrator.

37 (3) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full  
38 faith and credit of the United States is pledged to the payment of all  
39 amounts that may be required to be paid under any guarantee under  
40 this subsection.

41 (4) DEBENTURES.—

1 (A) SUBORDINATION.—A debenture purchased or guaranteed by  
 2 the Administrator under this subsection shall be subordinate to  
 3 any other debenture bond, promissory note, or other debt or obli-  
 4 gation of a licensee, unless the Administrator, in the exercise of  
 5 reasonable investment prudence and in consideration of the finan-  
 6 cial soundness of the licensee, determines otherwise.

7 (B) TERM; INTEREST.—A debenture purchased or guaranteed  
 8 by the Administrator under this subsection—

9 (i) may be issued for a term of not to exceed 15 years; and

10 (ii) shall bear interest at a rate not less than—

11 (I) a rate determined by the Secretary of the Treasury  
 12 taking into consideration the current average market  
 13 yield on outstanding marketable obligations of the  
 14 United States with remaining periods to maturity com-  
 15 parable to the average maturities on such debentures,  
 16 adjusted to the nearest 0.125 percent; plus

17 (II) in the case of a debenture obligated after Sep-  
 18 tember 30, 2001, an additional charge in an amount es-  
 19 tablished annually by the Administrator as necessary to  
 20 reduce to zero the cost (as defined in section 502 of the  
 21 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to  
 22 the Administrator of purchasing and guaranteeing de-  
 23 bentures under this chapter, which amount—

24 (aa) may not exceed 1.38 percent per year; and

25 (bb) which shall be paid to and retained by the  
 26 Administrator.

27 (5) OTHER TERMS AND CONDITIONS.—A debenture or participating  
 28 security purchased or guaranteed under this subsection shall also con-  
 29 tain such other terms as the Administrator may determine.

30 (6) TOTAL AMOUNT.—The total amount of debentures and partici-  
 31 pating securities of a licensee that may be guaranteed by the Adminis-  
 32 trator and outstanding shall not exceed 300 percent of the private cap-  
 33 ital of the licensee.

34 (7) MAXIMUM LEVERAGE.—

35 (A) IN GENERAL.—The maximum amount of outstanding lever-  
 36 age made available to a licensee shall be determined by the  
 37 amount of the licensee's private capital as follows:

38 (i) If the company has private capital of not more than  
 39 \$15,000,000, the total amount of leverage shall not exceed  
 40 300 percent of the amount of the licensee's private capital.

1 (ii) If the licensee has private capital of more than  
 2 \$15,000,000 but not more than \$30,000,000, the total  
 3 amount of leverage shall not exceed—

4 (I) \$45,000,000; plus

5 (II) 200 percent of the amount of private capital over  
 6 \$15,000,000.

7 (iii) If the company has private capital of more than  
 8 \$30,000,000, the total amount of leverage shall not exceed—

9 (I) \$75,000,000; plus

10 (II) the lesser of—

11 (aa) 100 percent of the amount of private capital  
 12 over \$30,000,000; or

13 (bb) \$15,000,000.

14 (B) ADJUSTMENTS.—The dollar amounts in clauses (i), (ii), and  
 15 (iii) of subparagraph (A) shall be adjusted annually to reflect in-  
 16 creases in the Consumer Price Index established by the Bureau of  
 17 Labor Statistics of the Department of Labor.

18 (C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In  
 19 calculating the outstanding leverage of a licensee for the purposes  
 20 of subparagraph (A), the Administrator shall not include the  
 21 amount of the cost basis of any equity investment made by the  
 22 licensee in a smaller enterprise located in a low-income geographic  
 23 area, to the extent that the total of such amounts does not exceed  
 24 50 percent of the licensee's private capital.

25 (D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

26 (i) IN GENERAL.—Subject to clause (ii), in calculating the  
 27 outstanding leverage of a company for purposes of subpara-  
 28 graph (A), the Administrator shall exclude the amount of the  
 29 cost basis of any energy saving qualified investment in a  
 30 smaller enterprise made in fiscal year 2009 or any fiscal year  
 31 thereafter by a company licensed in the applicable fiscal year.

32 (ii) LIMITATIONS.—

33 (I) AMOUNT OF EXCLUSION.—The amount excluded  
 34 under clause (i) for a company shall not exceed 33 per-  
 35 cent of the private capital of the company.

36 (II) MAXIMUM INVESTMENT.—A company shall not  
 37 make an energy saving qualified investment in any one  
 38 entity in an amount equal to more than 20 percent of  
 39 the private capital of the company.

40 (III) OTHER TERMS.—The exclusion of amounts under  
 41 clause (i) shall be subject to such terms as the Adminis-



1                   trator may impose to ensure that there is no cost (as de-  
2                   fined in section 502 of the Credit Reform Act of 1990  
3                   (2 U.S.C. 661a)) with respect to purchasing or guaran-  
4                   teeing any debenture involved.

5                   (8) AUTHORITY TO HAVE OUTSTANDING BOTH GUARANTEED DEBEN-  
6                   TURES AND GUARANTEED PARTICIPATING SECURITIES.—Subject to the  
7                   dollar and percentage limits stated in paragraphs (6) and (7), a li-  
8                   censee may issue and have outstanding both guaranteed debentures  
9                   and guaranteed participating securities so long as the total amount of  
10                  participating securities outstanding does not exceed 200 percent of the  
11                  amount of the licensee's private capital.

12                  (9) MAXIMUM AGGREGATE AMOUNT OF LEVERAGE.—

13                  (A) IN GENERAL.—Except as provided in subparagraph (B), the  
14                  aggregate amount of outstanding leverage issued to any licensee  
15                  or licensees that are commonly controlled (as determined by the  
16                  Administrator) shall not exceed \$90,000,000, as adjusted annually  
17                  for increases in the Consumer Price Index.

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

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

23                   (ii) impose such additional terms and conditions as the Ad-  
24                   ministrator determines to be appropriate to minimize the risk  
25                   of loss to the Administration in the event of default.

26                  (C) APPLICABILITY OF OTHER PROVISIONS.—Any leverage that  
27                  is issued to a licensee or licensees commonly controlled in an  
28                  amount that exceeds \$90,000,000, whether as a result of an in-  
29                  crease in the Consumer Price Index or a decision of the Adminis-  
30                  trator, is subject to subsection (d).

31                  (D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In  
32                  calculating the aggregate outstanding leverage of a licensee for  
33                  purposes of subparagraph (A), the Administrator shall not include  
34                  the amount of the cost basis of any equity investment made by  
35                  the licensee in a smaller enterprise located in a low-income geo-  
36                  graphic area, to the extent that the total of such amounts does  
37                  not exceed 50 percent of the amount of the licensee's private cap-  
38                  ital.

39                  (E) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

40                   (i) IN GENERAL.—Subject to clause (ii), in calculating the  
41                   aggregate outstanding leverage of a company for purposes of

1 subparagraph (A), the Administrator shall exclude the  
 2 amount of the cost basis of any energy saving qualified in-  
 3 vestment in a smaller enterprise made in fiscal year 2009 or  
 4 any fiscal year thereafter by a company licensed in the appli-  
 5 cable fiscal year.

6 (ii) LIMITATIONS.—

7 (I) AMOUNT OF EXCLUSION.—The amount excluded  
 8 under clause (i) for a company shall not exceed 33 per-  
 9 cent of the private capital of the company.

10 (II) MAXIMUM INVESTMENT.—A company shall not  
 11 make an energy saving qualified investment in any one  
 12 entity in an amount equal to more than 20 percent of  
 13 the private capital of the company.

14 (III) OTHER TERMS.—The exclusion of amounts under  
 15 clause (i) shall be subject to such terms as the Adminis-  
 16 trator may impose to ensure that there is no cost (as de-  
 17 fined in section 502 of the Credit Reform Act of 1990  
 18 (2 U.S.C. 661a)) with respect to purchasing or guaran-  
 19 teeing any debenture involved.

20 (e) THIRD PARTY DEBT.—The Administrator—

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

24 (2) shall permit a licensee having outstanding leverage to incur third  
 25 party debt only on such terms and subject to such conditions as the  
 26 Administrator may establish by regulation or otherwise.

27 (d) REQUIRED CERTIFICATIONS.—

28 (1) IN GENERAL.—The Administrator shall require a licensee, as a  
 29 condition of approval of an application for leverage, to certify in writ-  
 30 ing—

31 (A) in the case of a licensee with leverage less than or equal  
 32 to \$90,000,000, that not less than 20 percent of the licensee's ag-  
 33 gregate dollar amount of financings will be provided to smaller en-  
 34 terprises; and

35 (B) in the case of a licensee with leverage in excess of  
 36 \$90,000,000, that, in addition to satisfying the requirements of  
 37 subparagraph (A), 100 percent of the licensee's aggregate dollar  
 38 amount of financings made in whole or in part with leverage in  
 39 excess of \$90,000,000 will be provided to smaller enterprises.

40 (2) LICENSEES UNDER COMMON CONTROL.—Licensees under com-  
 41 mon control (as determined by the Administrator) shall be considered

1 to be a single licensee for purposes of determining both the applicability  
 2 of and compliance with the investment percentage requirements of this  
 3 subsection.

4 (e) CAPITAL IMPAIRMENT.—

5 (1) IN GENERAL.—Before approving an application for leverage sub-  
 6 mitted by a licensee, the Administrator—

7 (A) shall determine that the private capital of the licensee meets  
 8 the requirements of section 30301(g) of this title; and

9 (B) shall determine (taking into account the nature of the as-  
 10 sets of the licensee, the amount and terms of any third party debt  
 11 owed by the licensee, and any other factors determined to be rel-  
 12 evant by the Administrator) that the private capital of the licensee  
 13 has not been impaired to such an extent that the issuance of addi-  
 14 tional leverage would create or otherwise contribute to an unrea-  
 15 sonable risk of default or loss to the Federal Government.

16 (2) UNIFORM APPLICABILITY.—Any regulation issued by the Admin-  
 17 istrator to implement this subsection that applies to any licensee with  
 18 outstanding leverage obtained before the effective date of the regulation  
 19 shall apply uniformly to all licensees with outstanding leverage obtained  
 20 before that effective date.

21 (f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwith-  
 22 standing any other provision of law—

23 (1) the Administrator may allow the issuer of any preferred stock  
 24 sold to the Administrator before November 1, 1989, to redeem or re-  
 25 purchase the stock, on payment to the Administrator of an amount less  
 26 than the par value of the stock, for a repurchase price determined by  
 27 the Administrator after consideration of all relevant factors, includ-  
 28 ing—

29 (A) the market value of the stock;

30 (B) the value of benefits provided and anticipated to accrue to  
 31 the issuer;

32 (C) the amount of dividends paid, accrued, and anticipated; and

33 (D) the estimate of the Administrator of any anticipated re-  
 34 demption; and

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

39 (g) GUARANTEE OF PAYMENT OF, AND AUTHORITY TO PURCHASE, PAR-  
 40 TICIPATING SECURITIES.—

41 (1) DEFINITIONS.—In this subsection:

1 (A) COMBINED CAPITAL.—The term “combined capital” means  
2 the aggregate amount of private capital and outstanding leverage.

3 (B) EQUITY CAPITAL.—

4 (i) IN GENERAL.—The term “equity capital” means com-  
5 mon or preferred stock or a similar instrument.

6 (ii) INCLUSIONS.—The term “equity capital” includes sub-  
7 ordinated debt that has equity features, is not amortized, and  
8 provides for interest payments from appropriate sources, as  
9 determined by the Administrator.

10 (C) MANAGEMENT EXPENSE.—

11 (i) IN GENERAL.—The term “management expense” in-  
12 cludes—

13 (I) salaries;

14 (II) office expenses; and

15 (III) the costs of travel, business development, office  
16 and equipment rental, bookkeeping, and the develop-  
17 ment, investigation and monitoring of investments.

18 (ii) EXCLUSIONS.—The term “management expense” does  
19 not include—

20 (I) the cost of services provided by specialized outside  
21 consultants, outside lawyers, and outside auditors that  
22 perform services not generally expected of a venture cap-  
23 ital company; or

24 (II) the cost of services provided by any affiliate of a  
25 licensee that are not part of the normal process of mak-  
26 ing and monitoring venture capital investments.

27 (D) MAXIMUM TAX LIABILITY.—The term “maximum tax liabil-  
28 ity” means the amount of income allocated to each partner, share-  
29 holder, or member of a licensee (including an allocation to the Ad-  
30 ministrator as if the Administrator were a taxpayer) for Federal  
31 income tax purposes in the income tax return filed or to be filed  
32 by the licensee with respect to the fiscal year of the licensee imme-  
33 diately preceding a distribution described in clause (i) or (ii) of  
34 paragraph (10)(A), multiplied by the highest combined marginal  
35 Federal and State income tax rates for corporations or individuals,  
36 whichever is higher, on each type of income included in the return.

37 (E) PRIORITIZED PAYMENT.—The term “prioritized payment”  
38 includes—

39 (i) a dividend on stock;

40 (ii) interest on a debenture described in section  
41 30101(11)(B) of this title; and

1 (iii) a priority return on a preferred limited partnership in-  
2 terest that is paid only to the extent of earnings.

3 (F) STATE INCOME TAX.—The term “State income tax”, in ref-  
4 erence to the State income tax liability of a licensee, means the  
5 income tax of the State in which a licensee’s principal place of  
6 business is located.

7 (2) AUTHORITY.—

8 (A) IN GENERAL.—To encourage licensees to provide equity  
9 capital to small business concerns, the Administrator may guar-  
10 antee the payment of the redemption price and prioritized pay-  
11 ments on participating securities issued by licensees.

12 (B) PURCHASE BY TRUST OR POOL.—A trust or a pool acting  
13 on behalf of the Administrator may purchase participating securi-  
14 ties under subparagraph (A).

15 (3) TERMS AND CONDITIONS.—A guarantee or purchase under para-  
16 graph (2) shall be made on such terms and conditions as the Adminis-  
17 trator shall establish by regulation.

18 (4) REDEMPTION OF PARTICIPATING SECURITIES.—

19 (A) IN GENERAL.—A participating security shall be redeemed  
20 not later than 15 years after its date of issuance for an amount  
21 equal to 100 percent of the original issue price plus the amount  
22 of any accrued prioritized payment.

23 (B) CONTINUED OBLIGATION.—

24 (i) IN GENERAL.—If, at the time at which a participating  
25 security is redeemed, whether as scheduled or in advance, the  
26 issuing licensee—

27 (I) has not paid all accrued prioritized payments in  
28 full as provided in paragraph (5); and

29 (II) has not sold or otherwise disposed of all invest-  
30 ments subject to profit distributions under paragraph  
31 (11);

32 the licensee’s obligation to pay accrued and unpaid prioritized  
33 payments shall continue, and payment shall be made from the  
34 realized gain, if any, on the disposition of such investments,  
35 but if on disposition there is no realized gain, the obligation  
36 to pay accrued and unpaid prioritized payments shall be ex-  
37 tinguished.

38 (ii) LIMITATION.—Between the date on which a partici-  
39 pating security is redeemed and the date on which the li-  
40 censee has paid all accrued prioritized payments in full and  
41 has sold or otherwise disposed of all investments subject to

1 profit distributions, the licensee shall not make any in-kind  
2 distributions of such investments unless the licensee pays to  
3 the Administrator such sums, up to the amount of the unreal-  
4 ized appreciation on such investments, as are necessary to  
5 pay in full the accrued prioritized payments.

6 (5) PRIORITIZED PAYMENTS.—Prioritized payments on a partici-  
7 pating security shall be preferred and cumulative and payable out of  
8 the retained earnings available for distribution (as defined by the Ad-  
9 ministrator) of the issuing licensee at—

10 (A) a rate determined by the Secretary of the Treasury taking  
11 into consideration the current average market yield on outstanding  
12 marketable obligations of the United States with remaining peri-  
13 ods to maturity comparable to the average maturities on such se-  
14 curities, adjusted to the nearest 0.125 percent; plus

15 (B) in the case of a participating security obligated after Sep-  
16 tember 30, 2001, an additional charge, in an amount established  
17 annually by the Administrator, as necessary to reduce to zero the  
18 cost (as defined in section 502 of the Federal Credit Reform Act  
19 of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and  
20 guaranteeing participating securities under this chapter, which  
21 amount may not exceed 1.46 percent per year, and which shall be  
22 paid to and retained by the Administrator.

23 (6) SENIORITY OF PARTICIPATING SECURITIES ON LIQUIDATION OF  
24 LICENSEE.—In the event of liquidation of a licensee, a participating se-  
25 curity issued by the licensee shall be senior in priority for all purposes  
26 to any other equity interest in the licensee without regard to whether  
27 the participating security was issued before, on, or after the date on  
28 which the other equity interest was issued.

29 (7) INVESTMENT IN EQUITY CAPITAL.—A licensee that issues a par-  
30 ticipating security shall commit to invest or shall invest an amount  
31 equal to the outstanding face value of the participating security solely  
32 in equity capital.

33 (8) LIMITATION ON AMOUNT OF DEBT.—The only debt (other than  
34 leverage obtained under this chapter) that a licensee that issues a par-  
35 ticipating security may have outstanding shall be temporary debt in an  
36 amount that is equal to not more than 50 percent of the amount of  
37 private capital of the licensee.

38 (9) USE OF PROCEEDS TO PAY PRINCIPAL ON DEBENTURES.—The  
39 Administrator may permit the proceeds of a participating security  
40 issued by a licensee to be used to pay the principal amount due on an  
41 outstanding debenture guaranteed by the Administrator if—

1 (A) the licensee has outstanding equity capital invested in an  
 2 amount equal to the amount of the debenture being refinanced;  
 3 and

4 (B) the Administrator receives profit participation on such  
 5 terms and conditions as the Administrator may determine, but not  
 6 to exceed the percentages specified in paragraph (11).

7 (10) DISTRIBUTIONS; RETURN OF CAPITAL.—

8 (A) DISTRIBUTIONS TO PARTNERS, SHAREHOLDERS, AND MEM-  
 9 BERS.—

10 (i) ANNUAL DISTRIBUTIONS.—Notwithstanding subpara-  
 11 graph (B), if a licensee is operating as a limited partnership  
 12 or as a subchapter S corporation or an equivalent pass-  
 13 through entity for tax purposes and if there are no accumu-  
 14 lated and unpaid prioritized payments, the licensee may make  
 15 annual distributions to the partners, shareholders, or mem-  
 16 bers in amounts not greater than each partner's, share-  
 17 holder's, or member's maximum tax liability.

18 (ii) INTERIM DISTRIBUTIONS.—In addition to an annual  
 19 distribution, a licensee may make a distribution under this  
 20 subparagraph at any time during any calendar quarter based  
 21 on an estimate of the maximum tax liability.

22 (iii) EXCESS DISTRIBUTION.—If a licensee makes one or  
 23 more interim distributions for a calendar year, and the aggre-  
 24 gate amount of those distributions exceeds the maximum  
 25 amount that the licensee could have distributed based on a  
 26 single annual computation, any subsequent distribution by the  
 27 licensee under this subparagraph shall be reduced by an  
 28 amount equal to the excess amount distributed.

29 (B) DISTRIBUTIONS TO INVESTORS.—After making any dis-  
 30 tributions as provided in subparagraph (A), a licensee with partici-  
 31 pating securities outstanding may distribute the balance of income  
 32 to its investors (including the Administrator, in the percentages  
 33 specified in paragraph (11)) if there are no accumulated and un-  
 34 paid prioritized payments and if all amounts due the Adminis-  
 35 trator under paragraph (11) have been paid in full, subject to the  
 36 following conditions:

37 (i) As of the date of the proposed distribution, if the  
 38 amount of leverage outstanding is more than 200 percent of  
 39 the amount of private capital, any amounts distributed shall  
 40 be made to private investors and to the Administrator in the  
 41 ratio of leverage to private capital.

1 (ii) As of the date of the proposed distribution, if the  
 2 amount of leverage outstanding is more than 100 percent but  
 3 not more than 200 percent of the amount of private capital,  
 4 50 percent of any amounts distributed shall be made to the  
 5 Administrator and 50 percent shall be made to the private in-  
 6 vestors.

7 (iii) If the amount of leverage outstanding is 100 percent,  
 8 or less, of the amount of private capital, the ratio shall be  
 9 that for distribution of profits as provided in paragraph (11).

10 (iv) Any amount received by the Administrator under  
 11 clause (i) or (ii) shall be applied first as profit participation  
 12 as provided in paragraph (11), and any remainder shall be  
 13 applied as a prepayment of the principal amount of the par-  
 14 ticipating securities or debentures.

15 (C) RETURN OF CAPITAL TO INVESTORS.—

16 (i) IN GENERAL.—After making any distributions under  
 17 subparagraph (A), a licensee with participating securities out-  
 18 standing may return capital to its investors (including the  
 19 Administrator) if there are no accumulated and unpaid  
 20 prioritized payments and if all amounts due the Adminis-  
 21 trator under paragraph (11) have been paid in full.

22 (ii) RATIO.—Except as provided in clause (iii), any dis-  
 23 tribution under this subparagraph shall be made to private  
 24 investors and to the Administrator in the ratio of private cap-  
 25 ital to leverage as of the date of the proposed distribution.

26 (iii) NO REQUIRED DISTRIBUTION TO ADMINISTRATOR.—If  
 27 a licensee's amount of leverage outstanding is less than 50  
 28 percent of the amount of private capital or \$10,000,000,  
 29 whichever is less, no distribution shall be required to be made  
 30 to the Administrator unless the Administrator determines, on  
 31 a case by case basis, to require a distribution to the Adminis-  
 32 trator to reduce the amount of outstanding leverage to an  
 33 amount less than \$10,000,000.

34 (11) ADMINISTRATOR'S PROFIT PARTICIPATION.—

35 (A) IN GENERAL.—A licensee that issues participating securities  
 36 shall agree to allocate to the Administrator a share of its profits  
 37 determined by the relationship of its private capital to the amount  
 38 of participating securities guaranteed by the Administrator in ac-  
 39 cordance with the following:



1 (i) If the total amount of participating securities is 100  
 2 percent of private capital or less, the licensee shall allocate to  
 3 the Administrator a percentage share computed as follows:

4 (I)(aa) the amount of participating securities; divided  
 5 by

6 (bb) the amount of private capital; multiplied by

7 (II) 9 percent.

8 (ii) If the total amount of participating securities is more  
 9 than 100 percent but not greater than 200 percent of private  
 10 capital, the licensee shall allocate to the Administrator a per-  
 11 centage share computed as follows:

12 (I) 9 percent; plus

13 (II)(aa) 3 percent of the amount of participating secu-  
 14 rities minus the amount of private capital; divided by

15 (bb) the amount of private capital.

16 (B) MANAGEMENT EXPENSES.—For purposes of computing  
 17 profit participation under this paragraph, except as otherwise de-  
 18 termined by the Administrator, the management expenses of a li-  
 19 censee that issues participating securities shall not be greater than  
 20 2.5 percent per year of the combined capital of the company, plus  
 21 \$125,000 if the licensee's combined capital is less than  
 22 \$20,000,000.

23 (C) MAXIMUM PERCENTAGE.—

24 (i) IN GENERAL.—Notwithstanding any other provision of  
 25 this paragraph, unless required by operation of clause (ii), the  
 26 total percentage required by this paragraph shall not exceed  
 27 12 percent.

28 (ii) ADJUSTMENT.—If, on the date on which a partici-  
 29 pating security is marketed, the interest rate on Treasury  
 30 bonds with a maturity of 10 years is a rate other than 8 per-  
 31 cent, the Administrator shall adjust the rate specified in sub-  
 32 paragraph (A), either higher or lower, by the same percentage  
 33 by which the Treasury bond rate is higher or lower than 8  
 34 percent.

35 (D) EFFECT OF PARAGRAPH.—This paragraph does not create  
 36 any ownership interest of the Administrator in a licensee.

37 (12) IN-KIND DISTRIBUTIONS.—

38 (A) IN GENERAL.—A licensee may make an in-kind distribution  
 39 of securities only if the securities are publicly traded and market-  
 40 able.

41 (B) ADMINISTRATOR'S SHARE.—

1 (i) IN GENERAL.—A licensee shall deposit the Administra-  
 2 tor's share of an in-kind distribution of securities for disposi-  
 3 tion with a trustee designated by the Administrator, or, at  
 4 the option of the Administrator and with the agreement of  
 5 the licensee, the Administrator may direct the licensee to re-  
 6 tain the Administrator's share.

7 (ii) TRUSTEE.—A trustee designated by the Administrator  
 8 under clause (i) shall be a person that is knowledgeable about  
 9 and proficient in the marketing of thinly traded securities.

10 (iii) SALE.—If the licensee retains the Administrator's  
 11 share, the licensee shall sell the Administrator's share and  
 12 promptly remit the proceeds to the Administrator.

13 (13) ADDITIONAL RESTRICTIONS AND LIMITATIONS.—Participating  
 14 securities guaranteed under this subsection shall be subject to such re-  
 15 strictions and limitations, in addition to restrictions and limitations  
 16 specified in this subsection, as the Administrator may determine.

17 (h) COMPUTATION OF AMOUNTS DUE UNDER PARTICIPATING SECURI-  
 18 TIES.—The computation of amounts due the Administrator under partici-  
 19 pating securities shall be subject to the following terms and conditions:

20 (1) The formula in subsection (g)(11) shall be computed annually,  
 21 and the Administrator shall receive distributions of the Administrator's  
 22 profit participation at the same time as other investors in a licensee.

23 (2) The formula shall not be modified due to an increase in the pri-  
 24 vate capital unless the increase is provided for in a proposed business  
 25 plan submitted to and approved by the Administrator.

26 (3) After a distribution is made, the Administrator's share of the  
 27 distribution shall not be recomputed or reduced.

28 (4) If a licensee prepays or repays a participating security, the Ad-  
 29 ministrator shall receive the requisite participation on the distribution  
 30 of profits due to any investments held by the licensee on the date of  
 31 the prepayment or repayment.

32 (5) A licensee that was licensed on or before March 31, 1993, may  
 33 exclude from profit participation all investments held on that date. If  
 34 such a licensee does so, the Administrator shall determine the amount  
 35 of the future expenses attributable to the prior investment. If the li-  
 36 censee issues participating securities to refinance debentures as author-  
 37 ized in subsection (g)(9), the licensee may not exclude profits on exist-  
 38 ing investments under this paragraph.

39 (i) LEVERAGE FEE.—With respect to leverage granted by the Adminis-  
 40 trator to a licensee, the Administrator shall collect from the licensee a non-

1 refundable fee in an amount equal to 3 percent of the face amount of the  
2 leverage in the following manner:

3 (1) One percent on the date on which the Administrator enters into  
4 a commitment for leverage with the licensee.

5 (2) The balance of 2 percent (or 3 percent if no commitment has  
6 been entered into by the Administrator) on the date on which the lever-  
7 age is drawn by the licensee.

8 (j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-  
9 ceived and retained by the Administrator under this section shall be in-  
10 cluded in the calculations made by the Director of the Office of Manage-  
11 ment and Budget to offset the cost (as defined in section 502 of the Federal  
12 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-  
13 chasing and guaranteeing debentures and participating securities under this  
14 chapter.

15 (k) PERIODIC ISSUANCE OF GUARANTEES.—The Administrator shall  
16 issue guarantees under this section—

17 (1) at periodic intervals of not less than every 12 months; and

18 (2) at such shorter intervals as the Administrator considers appro-  
19 priate, taking into consideration the amount and number of guarantees.

20 (l) ENERGY SAVING DEBENTURES.—In addition to any other authority  
21 under this subtitle, a small business investment company licensed in fiscal  
22 year 2009 or any fiscal year thereafter may issue energy saving debentures.

### 23 **§ 30305. Equity capital for small business concerns**

24 (a) FUNCTION OF LICENSEES.—It shall be a function of a licensee to pro-  
25 vide a source of equity capital for small business concerns in such manner  
26 and under such terms as the licensee may determine in accordance with the  
27 regulations of the Administrator.

28 (b) CONDITIONS.—Before a licensee provides any capital to a small busi-  
29 ness concern under this section—

30 (1) the licensee may require the small business concern to refinance  
31 any or all of its outstanding indebtedness so that the licensee is the  
32 only holder of any evidence of indebtedness of the small business con-  
33 cern; and

34 (2) except as provided in regulations issued by the Administrator,  
35 the small business concern shall agree that the small business concern  
36 will not thereafter incur any indebtedness without first securing the ap-  
37 proval of the licensee and giving the licensee the first opportunity to  
38 finance the indebtedness.

39 (c) DIRECT OR COOPERATIVE PROVISION OF CAPITAL.—Equity capital  
40 provided to an incorporated small business concern under this section may

1 be provided directly or in cooperation with other investors, incorporated or  
2 unincorporated, through agreements to participate on an immediate basis.

3 **§ 30306. Long-term loans to small business concerns**

4 (a) AUTHORIZATION.—A licensee may make a loan, in the manner and  
5 subject to the conditions described in this section, to a small business con-  
6 cern to provide the small business concern with funds needed for sound fi-  
7 nancing, growth, modernization, and expansion.

8 (b) DIRECT LOANS; LOANS ON PARTICIPATION BASIS.—A loan made  
9 under this section may be made directly or in cooperation with one or more  
10 other lenders through an agreement to participate on an immediate or de-  
11 ferred basis.

12 (c) MAXIMUM RATE OF INTEREST.—

13 (1) IN GENERAL.—The maximum rate of interest for a licensee's  
14 share of a loan made under this section shall be determined by the Ad-  
15 ministrator.

16 (2) BASIS OF MAXIMUM RATE.—The Administrator shall permit a li-  
17 censee that has issued debentures under this chapter to charge a max-  
18 imum rate of interest based on—

19 (A) the coupon rate of interest on the outstanding debentures,  
20 determined on an annual basis; plus

21 (B) such other expenses of the licensee as may be approved by  
22 the Administrator.

23 (d) MATURITY.—A loan made under this section shall have a maturity  
24 not exceeding 20 years.

25 (e) SOUNDNESS OF LOAN; SECURITY.—A loan made under this section  
26 shall be of such sound value, or so secured, as reasonably to ensure repay-  
27 ment.

28 (f) EXTENSION OR RENEWAL.—A licensee that has made a loan to a  
29 small business concern under this section may extend the maturity of or  
30 renew the loan for additional periods, not exceeding 10 years, if the licensee  
31 finds that the extension or renewal will aid in the orderly liquidation of the  
32 loan.

33 **§ 30307. Limitation on amount of financing**

34 If a licensee has obtained financing from the Administrator and the fi-  
35 nancing remains outstanding, the aggregate amount of obligations and secu-  
36 rities acquired and for which commitments may be issued by the licensee  
37 under this chapter for any single small business concern shall not exceed  
38 20 percent of the amount of private capital of the licensee, without the ap-  
39 proval of the Administrator.

1 **§ 30308. Cooperation with banks and other investors or**  
 2 **lenders**

3 (a) IN GENERAL.—Under any circumstances in which it is practicable,  
 4 the operations of a licensee (including the generation of business) may be  
 5 undertaken in cooperation with banks or other investors or lenders, and any  
 6 servicing or initial investigation required for loans or acquisitions of securi-  
 7 ties by the licensee under this chapter may be handled through such banks  
 8 or other investors or lenders on a fee basis.

9 (b) FEES.—A licensee may receive fees for services rendered to banks and  
 10 other investors and lenders.

11 **§ 30309. Advisory services; Federal Reserve Banks as deposi-**  
 12 **tories or fiscal agents; investment of funds**

13 (a) ADVISORY SERVICES.—A licensee, under any circumstances in which  
 14 it is practicable, may—

15 (1) use the advisory services of the Federal Reserve System and of  
 16 the Department of Commerce that are available for and useful to in-  
 17 dustrial and commercial businesses; and

18 (2) provide consulting and advisory services on a fee basis and have  
 19 on its staff persons competent to provide such services.

20 (b) FEDERAL RESERVE BANK AS DEPOSITORY OR FISCAL AGENT.—A  
 21 Federal Reserve bank may act as a depository or fiscal agent for a licensee.

22 (c) INVESTMENT OF FUNDS.—A licensee that was licensed before October  
 23 1, 2004, and has outstanding financings may invest funds not needed for  
 24 its operations—

25 (1) in direct obligations of, or obligations guaranteed as to principal  
 26 and interest by, the United States;

27 (2) in certificates of deposit or other accounts of federally insured  
 28 banks or other federally insured depository institutions, if the certifi-  
 29 cates or other accounts mature or are otherwise fully available not  
 30 more than one year after the date of the investment; or

31 (3) in mutual funds, securities, or other instruments that consist of,  
 32 or represent pooled assets of, investments described in paragraph (1)  
 33 or (2).

34 **§ 30310. Nonliability of the United States**

35 Except as expressly provided otherwise in this subtitle, nothing in this  
 36 subtitle or in any other provision of law shall be deemed to impose any li-  
 37 ability on the United States with respect to any obligation entered into, or  
 38 stocks issued, or commitments made, by a licensee.

39 **§ 30311. Certifications of eligibility**

40 (a) CERTIFICATION BY SMALL BUSINESS CONCERN.—Before receiving fi-  
 41 nancial assistance from a licensee, a small business concern shall certify in

1 writing that the small business concern meets the applicable eligibility re-  
2 quirements of this chapter.

3 (b) CERTIFICATION BY LICENSEE.—Before providing financial assistance  
4 to a small business concern under this chapter, a licensee shall certify in  
5 writing that—

6 (1) the licensee has reviewed the application for assistance of the  
7 small business concern; and

8 (2) all documentation and other information supports the eligibility  
9 of the applicant.

10 (c) RETENTION OF CERTIFICATIONS.—A certificate made under sub-  
11 section (a) or (b) shall be retained by a licensee for the duration of the fi-  
12 nancial assistance covered by the certificate.

### 13 § 30312. Interest rates

14 (a) DEFINITION OF INTEREST.—In this section:

15 (1) IN GENERAL.—The term “interest” means the maximum manda-  
16 tory sum, expressed in dollars or as a percentage rate, that is payable  
17 with respect to a business loan amount received by a small business  
18 concern.

19 (2) EXCLUSION.—The term “interest” does not include the value, if  
20 any, of a contingent obligation (including a warrant, royalty, or conver-  
21 sion right) granting a licensee an ownership interest in the equity or  
22 increased future revenue of a small business concern receiving the busi-  
23 ness loan.

24 (b) INTEREST RATE.—A licensee may charge interest on a loan at a rate  
25 that does not exceed the maximum rate prescribed by regulation by the Ad-  
26 ministrator for loans made by any licensee (determined without regard to  
27 any State rate incorporated by the regulation).

28 (c) PREEMPTION OF STATE LAW.—A State law (including a constitu-  
29 tional provision) shall be preempted for purposes of subsection (a) with re-  
30 spect to a loan if the loan is made before the date, on or after April 1,  
31 1980, on which the State adopts a law, or certifies that the voters of the  
32 State have voted in favor of any provision, constitutional or otherwise, that  
33 states explicitly and by its terms that the State does not want this section  
34 to apply with respect to loans made in the State.

35 (d) EXCESSIVE INTEREST.—

36 (1) FORFEITURE.—If the maximum rate of interest authorized under  
37 subsection (a) on a loan made by a licensee exceeds the rate that would  
38 be authorized by applicable State law if the State law were not pre-  
39 empted under subsection (a), the charging of interest at a rate in ex-  
40 cess of the rate authorized by subsection (a) shall be deemed a for-  
41 feiture of the greater of—

1 (A) all interest that the loan carries with it; or

2 (B) all interest that has been agreed to be paid on the loan.

3 (2) DOUBLE RECOVERY.—In the case of a loan with respect to which  
4 there is a forfeiture of interest under paragraph (1), the person that  
5 paid the interest may recover from the licensee that made the loan, in  
6 a civil action commenced in a court of appropriate jurisdiction not later  
7 than 2 years after the most recent payment of interest, an amount  
8 equal to twice the amount of the interest paid on the loan.

9 **§ 30313. Conflicts of interest**

10 (a) IN GENERAL.—For the purpose of controlling conflicts of interest  
11 that may be detrimental to small business concerns, to licensees, to the  
12 shareholders, partners, or members of small business concerns or licensees,  
13 or to the purposes of this subtitle, the Administrator shall adopt regulations  
14 to govern transactions with—

15 (1) any officer, director, shareholder, partner, or member of a li-  
16 censee; or

17 (2) any person or concern in which any interest, direct or indirect,  
18 financial or otherwise, is held by any officer, director, shareholder,  
19 partner, or member of—

20 (A) a licensee; or

21 (B) any person or concern with an interest, direct or indirect,  
22 financial or otherwise, in a licensee.

23 (b) CONTENTS.—The regulations under subsection (a) shall include ap-  
24 propriate requirements for public disclosure necessary to the purposes of  
25 this section.

26 **§ 30314. Ineligibility of guaranteed obligations for purchase**  
27 **by Federal Financing Bank**

28 No provision of law authorizes the Federal Financing Bank to acquire—

29 (1) any obligation the payment of principal or interest on which has  
30 at any time been guaranteed in whole or in part under this chapter;

31 (2) any obligation that is an interest in an obligation described in  
32 paragraph (1); or

33 (3) any obligation that is secured by, or substantially all of the value  
34 of which is attributable to, an obligation described in paragraph (1) or  
35 (2).

36 **§ 30315. Trust certificates**

37 (a) ISSUANCE.—

38 (1) IN GENERAL.—The Administrator may issue trust certificates  
39 representing ownership of all or a fractional part of—

40 (A) debentures issued by a licensee and guaranteed by the Ad-  
41 ministrator under this chapter; or

1 (B) participating securities issued by a licensee and purchased  
2 and guaranteed under section 30304 of this title.

3 (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)  
4 shall be based on and backed by a trust or pool approved by the Ad-  
5 ministrator and composed solely of guaranteed debentures or guaran-  
6 teed participating securities.

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 or the redemption  
15 price of and priority payments on the participating securities that com-  
16 pose the trust or pool.

17 (3) PREPAYMENT OR REDEMPTION.—

18 (A) REDUCTION OF GUARANTEE.—If a debenture in a trust or  
19 pool is prepaid or a participating security is redeemed, voluntarily  
20 or involuntarily, or in the event of default of a debenture or vol-  
21 untary or involuntary redemption of a participating security, the  
22 guarantee of timely payment of principal and interest on the re-  
23 lated trust certificates shall be reduced in proportion to the  
24 amount of principal and interest that the prepaid debenture or re-  
25 deemed participating security and priority payments represent in  
26 the trust or pool.

27 (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a  
28 prepaid or defaulted debenture or a priority payment on a partici-  
29 pating security shall accrue and be guaranteed by the Adminis-  
30 trator only through the date of payment on the guarantee.

31 (C) CALL OF TRUST CERTIFICATE.—During the term of a trust  
32 certificate, the trust certificate may be called for redemption due  
33 to prepayment or default of all debentures or redemption, vol-  
34 untary or involuntary, of all participating securities residing in the  
35 trust or pool.

36 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
37 and credit of the United States is pledged to the payment of all amounts  
38 that may be required to be paid under any guarantee of a trust certificate  
39 issued by the Administrator (or an agent of the Administrator) under this  
40 section.

41 (d) FEES.—



1           (1) ADMINISTRATOR.—The Administrator shall not collect a fee for  
2 a guarantee under this section.

3           (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-  
4 clude an agent of the Administrator from collecting a fee approved by  
5 the Administrator for performing the functions described in subsection  
6 (f)(2).

7           (e) SUBROGATION; OWNERSHIP RIGHTS IN DEBENTURES AND PARTICI-  
8 PATING SECURITIES.—

9           (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
10 antee issued under this section, the Administrator shall be subrogated  
11 fully to the rights satisfied by the payment.

12           (2) OWNERSHIP RIGHTS IN DEBENTURES AND PARTICIPATING SECU-  
13 RITIES.—No Federal, State or local law shall preclude or limit the ex-  
14 ercise by the Administrator of the Administrator's ownership rights in  
15 the debentures or participating securities residing in a trust or pool  
16 against which trust certificates are issued.

17           (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEAL-  
18 ERS.—

19           (1) CENTRAL REGISTRATION.—The Administrator shall provide for  
20 a central registration of all trust certificates sold under this section.

21           (2) AGENT.—

22           (A) IN GENERAL.—The Administrator shall contract with one or  
23 more agents to carry out on behalf of the Administrator the pool-  
24 ing and the central registration functions of this section including,  
25 notwithstanding any other provision of law—

26           (i) maintenance on behalf of and under the direction of the  
27 Administrator, such commercial bank accounts or investments  
28 in obligations of the United States as may be necessary to fa-  
29 cilitate trusts or pools backed by debentures or participating  
30 securities guaranteed under this chapter; and

31           (ii) the issuance of trust certificates to facilitate such  
32 poolings.

33           (B) BOND OR INSURANCE.—An agent under subparagraph (A)  
34 shall provide a fidelity bond or insurance in such amounts as the  
35 Administrator determines to be necessary to fully protect the in-  
36 terests of the Government.

37           (3) DISCLOSURE.—The Administrator shall require a seller of a trust  
38 certificate issued under this section to disclose to the purchaser, before  
39 the sale, information on the terms, conditions, and yield of the trust  
40 certificate.

1 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator  
2 may regulate brokers and dealers in trust certificates sold under this  
3 section.

4 (5) EFFECT OF SUBSECTION.—This subsection does not preclude the  
5 use of a book-entry or other electronic form of registration for trust  
6 certificates.

7 (g) PERIODIC ISSUANCE OF TRUST CERTIFICATES.—The Administrator  
8 shall issue trust certificates under this section—

9 (1) at periodic intervals of not less than every 12 months; and

10 (2) at such shorter intervals as the Administrator considers appro-  
11 priate, taking into consideration the amount and number of trust cer-  
12 tificates.

13 **§ 30316. Regulations**

14 The Administrator may prescribe regulations governing the operations of  
15 licensees, and regulations to carry out this subtitle, in accordance with the  
16 purposes of this subtitle.

17 **§ 30317. Unlawful acts and omissions**

18 (a) VIOLATION BY LICENSEE DEEMED VIOLATION BY PERSON PARTICI-  
19 PATING.—If a licensee violates any provision of this subtitle (including a  
20 regulation issued under this subtitle) by reason of its failure to comply with  
21 the terms of the provision (or regulation) or by reason of its engaging in  
22 any act or practice that constitutes or will constitute a violation of the pro-  
23 vision (or regulation), the violation shall also be a violation and an unlawful  
24 act on the part of any person who, directly or indirectly, authorizes, orders,  
25 participates in, or causes, brings about, counsels, aids, or abets in the com-  
26 mission of any act, practice, or transaction that constitutes or will con-  
27 stitute, in whole or in part, the violation.

28 (b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer,  
29 director, employee, agent, or other participant in the management or con-  
30 duct of the affairs of a licensee to engage in any act or practice, or to omit  
31 any act, in breach of the fiduciary duty of the officer, director, employee,  
32 agent, or participant if, as a result of engaging in the act or practice or  
33 of the omission to act, the licensee suffers or is in imminent danger of suf-  
34 fering financial loss or other damage.

35 (c) DISQUALIFICATION OF OFFICERS AND EMPLOYEES FOR DISHONESTY,  
36 FRAUD, OR BREACH OF TRUST.—Except with the written consent of the  
37 Administrator, it shall be unlawful—

38 (1) for any person to take office as an officer, director, or employee  
39 of a licensee, or to become an agent or participant in the conduct of  
40 the affairs or management of a licensee, if the person—

41 (A) has been convicted of—

- 1 (i) a felony; or  
 2 (ii) any other criminal offense involving dishonesty or  
 3 breach of trust; or  
 4 (B) has been found civilly liable in damages, or is permanently  
 5 or temporarily enjoined by an order, judgment, or decree of a  
 6 court of competent jurisdiction, by reason of any act or practice  
 7 involving fraud or breach of trust; or  
 8 (2) for any person to continue to serve in any of the above-described  
 9 capacities, if the person, after November 6, 1966—  
 10 (A) is convicted of—  
 11 (i) a felony; or  
 12 (ii) any other criminal offense involving dishonesty or  
 13 breach of trust; or  
 14 (B) is found civilly liable in damages, or is permanently or tem-  
 15 porarily enjoined by an order, judgment, or decree of a court of  
 16 competent jurisdiction, by reason of any act or practice involving  
 17 fraud or breach of trust.

18 **§ 30318. Investigations; examinations; valuations**

19 (a) INVESTIGATION OF VIOLATIONS.—

20 (1) IN GENERAL.—The Administrator may make such investigations  
 21 as the Administrator considers necessary to determine whether a li-  
 22 censee or any other person has engaged or is about to engage in an  
 23 act or practice that constitutes or will constitute a violation of any pro-  
 24 vision of this subtitle (including a regulation under this subtitle) or of  
 25 an order issued under this subtitle.

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

30 (3) POWERS.—For the purpose of any investigation, the Adminis-  
 31 trator may administer oaths and affirmations, subpoena witnesses,  
 32 compel the attendance of witnesses, take evidence, and require the pro-  
 33 duction of any records that are relevant to the inquiry. The attendance  
 34 of witnesses and the production of any such records may be required  
 35 from any place in the United States.

36 (4) CONTUMACY OR REFUSAL TO OBEY ORDER OF THE ADMINIS-  
 37 TRATOR.—

38 (A) IN GENERAL.—In case of contumacy by, or refusal to obey  
 39 a subpoena issued to, any person (including a licensee), the Ad-  
 40 ministrator may invoke the aid of any court of the United States  
 41 within the jurisdiction of which the investigation or proceeding is

1 carried on, or in which the person resides or carries on business,  
 2 in requiring the attendance and testimony of witnesses and the  
 3 production of records, and the court may issue an order requiring  
 4 the person to appear before the Administrator, to produce records,  
 5 or to give testimony touching the matter under investigation.

6 (B) FAILURE TO OBEY COURT ORDER.—A failure to obey an  
 7 order of the court may be punished by the court as a contempt  
 8 of court.

9 (C) PROCESS.—Process in a case under this paragraph may be  
 10 served in the judicial district of which the person is an inhabitant  
 11 or wherever the person may be found.

12 (b) EXAMINATIONS OF AND REPORTS BY LICENSEES.—

13 (1) IN GENERAL.—A licensee shall be subject to examinations made  
 14 by direction of the Investment Division of the Administration, which  
 15 may be conducted with the assistance of a private sector entity that  
 16 has the qualifications to conduct and expertise in conducting such ex-  
 17 aminations.

18 (2) EXAMINATION FEE.—The Administrator may assess against a li-  
 19 censee that is examined, as an examination fee, the cost of the exam-  
 20 ination (including compensation of the examiners), and the licensee  
 21 shall pay the examination fee.

22 (3) USE OF EXAMINATION FEES.—Examination fees collected under  
 23 this subsection shall be deposited in the account for salaries and ex-  
 24 penses of the Administration, and are authorized to be appropriated  
 25 solely to cover the costs of examinations and other program oversight  
 26 activities.

27 (4) REPORTS.—

28 (A) IN GENERAL.—A licensee shall make such reports to the  
 29 Administrator at such times and in such form as the Adminis-  
 30 trator may require.

31 (B) EXEMPTION.—The Administrator may exempt from a re-  
 32 quirement to make a report a licensee that is registered under the  
 33 Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) to the  
 34 extent necessary to avoid duplication in reporting requirements.

35 (C) VIOLATION.—

36 (i) IN GENERAL.—Except as provided in clause (ii), a li-  
 37 censee that violates any regulation or written directive issued  
 38 by the Administrator requiring the filing of any regular or  
 39 special report under subparagraph (A) shall pay to the  
 40 United States a civil penalty of not more than \$100 for each  
 41 day of the continuance of the licensee's failure to file the re-

1 port, unless it is shown that the failure is due to reasonable  
2 cause and not due to willful neglect.

3 (ii) EXEMPTION FROM REPORTING REQUIREMENTS.—

4 (I) IN GENERAL.—If the Administrator determines  
5 that granting an exemption would not be inconsistent  
6 with the public interest or the protection of the Adminis-  
7 tration, the Administrator may exempt a licensee from  
8 clause (i)—

9 (aa) in whole or in part; and

10 (bb) on such terms and conditions and for such  
11 period of time as the Administrator considers nec-  
12 essary and appropriate.

13 (II) PROCEDURE.—The Administrator may grant an  
14 exemption under subclause (I)—

15 (aa) by regulation; or

16 (bb) on application of an interested party, at any  
17 time previous to a violation described in clause (i),  
18 by order, after notice and opportunity for hearing.

19 (iii) ALTERNATIVE REQUIREMENTS.—The Administrator  
20 may for purposes of this subparagraph make any alternative  
21 requirement that the Administrator considers to be appro-  
22 priate to a situation.

23 (iv) CIVIL ACTION.—The civil penalty provided for in this  
24 subparagraph may be recovered in a civil action brought by  
25 the Administrator.

26 (5) SCOPE OF EXAMINATION.—An examination shall be conducted in  
27 such detail as to determine whether the licensee—

28 (A) has engaged solely in lawful activities and those con-  
29 templated by this chapter;

30 (B) has engaged in prohibited conflicts of interest;

31 (C) has acquired or exercised illegal control of an assisted small  
32 business;

33 (D) has made investments in small business concerns for not  
34 less than one year;

35 (E) has invested more than 20 percent of its capital in any indi-  
36 vidual small business, if that restriction is applicable;

37 (F) has engaged in relending, foreign investments, or passive in-  
38 vestments; or

39 (G) has charged an interest rate in excess of the maximum per-  
40 mitted by law.

41 (6) FREQUENCY OF EXAMINATION.—

1 (A) IN GENERAL.—A licensee shall be examined at least every  
2 2 years.

3 (B) WAIVER.—The Administrator may waive an examination of  
4 a licensee—

5 (i) for up to one additional year if, the Administrator de-  
6 termines that such a delay would be appropriate, based on  
7 the amount of debentures being issued by the licensee and the  
8 repayment record of the licensee, the prior operating experi-  
9 ence of the licensee, the contents and results of the last exam-  
10 ination of the licensee, and the management expertise of the  
11 licensee; or

12 (ii) if the licensee's operations have been suspended while  
13 the licensee is involved in litigation or is in receivership.

14 (c) VALUATIONS.—

15 (1) FREQUENCY OF VALUATIONS.—

16 (A) IN GENERAL.—A licensee shall submit to the Administrator  
17 a written valuation of the loans and investments of the licensee  
18 not less often than semiannually, or otherwise on the request of  
19 the Administrator, except that a licensee with no leverage out-  
20 standing shall submit a valuation annually unless the Adminis-  
21 trator determines otherwise.

22 (B) MATERIAL ADVERSE CHANGES.—Not later than 30 days  
23 after the end of a fiscal quarter of a licensee during which a mate-  
24 rial adverse change in the aggregate valuation of the loans and in-  
25 vestments or operations of the licensee occurs, the licensee shall  
26 notify the Administrator in writing of the nature and extent of  
27 that change.

28 (C) INDEPENDENT CERTIFICATION.—

29 (i) IN GENERAL.—Not less than once during each fiscal  
30 year, a licensee shall submit to the Administrator the finan-  
31 cial statements of the licensee, audited by an independent cer-  
32 tified public accountant approved by the Administrator.

33 (ii) AUDIT REQUIREMENTS.—An audit conducted under  
34 clause (i) shall include—

35 (I) a review of the procedures and documentation used  
36 by the licensee in preparing the valuations required by  
37 this section; and

38 (II) a statement by the independent certified public  
39 accountant that the valuations were prepared in con-  
40 formity with the valuation criteria applicable to the li-  
41 censee established in accordance with paragraph (2).

1           (2) VALUATION CRITERIA.—A valuation submitted under this sub-  
2 section shall be prepared by the licensee in accordance with valuation  
3 criteria that—

4           (A) shall be established or approved by the Administrator; and

5           (B) shall include appropriate safeguards to ensure that the  
6 noncash assets of a licensee are not overvalued.

7 **§ 30319. Revocation and suspension of licenses; cease and**  
8 **desist orders**

9           (a) GROUNDS FOR REVOCATION OR SUSPENSION.—The Administrator  
10 may revoke or suspend a license—

11           (1) for a false statement knowingly made in a written statement re-  
12 quired under this chapter (including a regulation under this chapter);

13           (2) for failure, in a written statement required under this chapter  
14 (including a regulation under this chapter), to state a material fact  
15 necessary to make the statement not misleading in the light of the cir-  
16 cumstances under which the statement is made;

17           (3) for willful or repeated violation of, or willful or repeated failure  
18 to observe, any provision of this chapter (including a regulation under  
19 this chapter); or

20           (4) for violation of, or failure to observe, a cease and desist order  
21 issued by the Administrator under this section.

22           (b) GROUNDS FOR CEASE AND DESIST ORDER.—If a licensee or any  
23 other person has not complied with any provision of this subtitle (including  
24 a regulation issued under this subtitle) or is engaging or is about to engage  
25 in any act or practice that constitutes or will constitute a violation of this  
26 subtitle (including a regulation), the Administrator may—

27           (1) order such licensee or other person—

28           (A) to cease and desist from the action or failure to act; and

29           (B) to take such action or to refrain from such action as the  
30 Administrator considers necessary to ensure compliance with this  
31 subtitle (including regulations); and

32           (2) suspend the license of a licensee against which an order has been  
33 issued until the licensee complies with the order.

34           (c) PROCEDURE.—

35           (1) ORDER TO SHOW CAUSE.—

36           (A) IN GENERAL.—Before revoking or suspending a license  
37 under subsection (a) or issuing a cease and desist order under  
38 subsection (b), the Administrator shall serve on the licensee and  
39 any other person involved an order to show cause why an order  
40 revoking or suspending the license or a cease and desist order  
41 should not be issued.

- 1 (B) CONTENTS.—An order to show cause shall—  
 2 (i) contain a statement of the matters of fact and law as-  
 3 serted by the Administrator and the legal authority and juris-  
 4 diction under which a hearing is to be held; and  
 5 (ii) state that a hearing will be held before the Adminis-  
 6 trator at a time and place stated in the order.

7 (2) DETERMINATION.—

8 (A) IN GENERAL.—If, after hearing (or waiver of hearing), the  
 9 Administrator determines on the record that an order revoking or  
 10 suspending the license or a cease and desist order should issue,  
 11 the Administrator shall promptly issue such an order.

12 (B) CONTENTS.—An order revoking or suspending a license or  
 13 cease and desist order shall—

- 14 (i) include a statement of the findings of the Administrator  
 15 and the grounds and reasons for the order; and  
 16 (ii) state the effective date of the order.

17 (C) SERVICE.—The Administrator shall cause an order revoking  
 18 or suspending a license or cease and desist order to be served on  
 19 the licensee and any other person involved.

20 (d) SUBPOENAS.—

21 (1) IN GENERAL.—The Administrator may require by subpoena the  
 22 attendance and testimony of witnesses and the production of all records  
 23 relating to a hearing from any place in the United States.

24 (2) FEES AND MILEAGE.—A witness summoned before the Adminis-  
 25 trator shall be paid by the party at whose instance the witness is called  
 26 the same fees and mileage that are paid witnesses in the courts of the  
 27 United States.

28 (3) DISOBEDIENCE OF SUBPOENA.—In case of disobedience to a sub-  
 29 poena, the Administrator, or any party to a proceeding before the Ad-  
 30 ministrator, may invoke the aid of any court of the United States in  
 31 requiring the attendance and testimony of a witness and the production  
 32 of a record.

33 (e) PETITION TO MODIFY OR SET ASIDE ORDER.—

34 (1) FILING.—

35 (A) PETITION BY RIGHT.—An order issued by the Adminis-  
 36 trator under this section shall be final and conclusive unless, with-  
 37 in 30 days after service of the order, the licensee or other person  
 38 against which the order is issued appeals to the United States  
 39 court of appeals for the circuit in which the licensee has its prin-  
 40 cipal place of business by filing with the clerk of the court a peti-



1           tion praying that the Administrator's order be set aside or modi-  
2           fied in the manner stated in the petition.

3           (B) PETITION BY LEAVE OF COURT.—After the expiration of  
4           the 30-day period described in subparagraph (A), a petition may  
5           be filed only by leave of court on a showing of reasonable grounds  
6           for failure to file the petition within the 30-day period.

7           (2) TRANSCRIPT.—The clerk of the court shall immediately cause a  
8           copy of the petition to be delivered to the Administrator, and the Ad-  
9           ministrator shall certify and file in the court a transcript of the record  
10          on which the order complained of was entered. If, before the transcript  
11          is filed, the Administrator amends or sets aside the order, in whole or  
12          in part, the petitioner may amend the petition within such time as the  
13          court may determine, on notice to the Administrator.

14          (3) STAY OR SUSPENSION.—The filing of a petition for review shall  
15          not of itself stay or suspend the operation of the order of the Adminis-  
16          trator, but the court of appeals may restrain or suspend, in whole or  
17          in part, the operation of the order pending the final hearing and deter-  
18          mination of the petition.

19          (4) COURT ACTION.—The court may affirm, modify, or set aside the  
20          order of the Administrator.

21          (5) ADDITIONAL EVIDENCE.—

22           (A) REOPENING OF HEARING.—If the court determines that the  
23           just and proper disposition of the case requires the taking of addi-  
24           tional evidence, the court shall order the Administrator to reopen  
25           the hearing for the taking of such evidence, in such manner and  
26           on such terms and conditions as the court considers proper.

27           (B) MODIFIED OR NEW FINDINGS.—The Administrator—

28           (i) may modify the findings as to the facts, or make new  
29           findings, by reason of the additional evidence so taken; and

30           (ii) shall file any modified or new findings and the amend-  
31           ments, if any, of the order, with the record of such additional  
32           evidence.

33          (6) LIMITATION ON CONSIDERATION OF OBJECTIONS.—No objection  
34          to an order of the Administrator shall be considered by the court unless  
35          the objection was urged before the Administrator or, if it was not so  
36          urged, unless there were reasonable grounds for failure to do so.

37          (7) REVIEW OF JUDGMENT.—A judgment of the court affirming,  
38          modifying, or setting aside an order of the Administrator shall be sub-  
39          ject only to review by the Supreme Court on certification or certiorari  
40          as provided in section 1254 of title 28.

41          (f) ENFORCEMENT OF ORDER.—

1 (1) IN GENERAL.—If a licensee or other person against which an  
 2 order is issued under this section fails to obey the order, the Adminis-  
 3 trator—

4 (A) may apply to the United States court of appeals for the cir-  
 5 cuit in which the licensee has its principal place of business for  
 6 the enforcement of the order; and

7 (B) shall file a transcript of the record on which the order com-  
 8 plained of was entered.

9 (2) NOTICE.—On filing of an application under paragraph (1), the  
 10 court shall cause notice of the application to be served on the licensee  
 11 or other person.

12 (3) EVIDENCE, PROCEDURE, AND JURISDICTION.—The evidence to  
 13 be considered, the procedure to be followed, and the jurisdiction of the  
 14 court shall be the same as is provided in subsection (e) for an applica-  
 15 tion to set aside or modify an order.

16 **§ 30320. Removal or suspension of, or prohibition of partici-**  
 17 **pation by, management officials**

18 (a) REMOVAL.—

19 (1) NOTICE OF REMOVAL.—The Administrator may serve on a man-  
 20 agement official a written notice of the Administrator's intention to re-  
 21 move the management official if, in the opinion of the Administrator—

22 (A) the management official—

23 (i) has willfully and knowingly committed a substantial vio-  
 24 lation of—

25 (I) this subtitle (including a regulation issued under  
 26 this subtitle); or

27 (II) a cease and desist order that has become final; or

28 (ii) has willfully and knowingly committed or engaged in an  
 29 act, omission, or practice that constitutes a substantial breach  
 30 of a fiduciary duty of the management official as a manage-  
 31 ment official; and

32 (B) the violation or breach of fiduciary duty is one involving  
 33 personal dishonesty on the part of the management official.

34 (2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall—

35 (A) contain a statement of the facts constituting grounds for  
 36 the notice; and

37 (B) establish a time and place at which a hearing will be held  
 38 on the proposed removal.

39 (3) HEARING.—

40 (A) TIMING.—A hearing on the notice shall be established for  
 41 a date not earlier than 30 days nor later than 60 days after the

1 date of service of the notice under paragraph (2), unless an earlier  
2 or a later date is set by the Administrator at the request of—

- 3 (i) the management official, for good cause; or  
4 (ii) the Attorney General.

5 (B) CONSENT.—Unless the management official appears at a  
6 hearing under this paragraph in person or by an authorized rep-  
7 resentative, the management official shall be deemed to have con-  
8 sented to the issuance of an order of removal under paragraph (4).

9 (4) ISSUANCE OF ORDER OF REMOVAL.—

10 (A) IN GENERAL.—In the event of consent under paragraph  
11 (3)(B), or if on the record made at a hearing under this sub-  
12 section the Administrator finds that any of the grounds specified  
13 in the notice of removal has been established, the Administrator  
14 may issue such orders of removal from office as the Administrator  
15 considers appropriate.

16 (B) EFFECTIVENESS.—An order under subparagraph (A)  
17 shall—

18 (i) become effective on the expiration of 30 days after the  
19 date of service on the management official and the licensee  
20 (except in the case of an order issued on consent as described  
21 in paragraph (3)(B), which shall become effective at the time  
22 specified in the order); and

23 (ii) remain effective and enforceable, except to such extent  
24 as the order is stayed, modified, terminated, or set aside by  
25 action of the Administrator or a reviewing court in accord-  
26 ance with this section.

27 (b) SUSPENSION OR PROHIBITION OF PARTICIPATION.—

28 (1) IN GENERAL.—The Administrator may, if the Administrator con-  
29 siders it necessary for the protection of the licensee or the interests of  
30 the Administration, suspend from office or prohibit from further par-  
31 ticipation in any manner in the management or conduct of the affairs  
32 of a licensee, or both, a management official described in subsection  
33 (a)(1) by written notice to that effect served on the management offi-  
34 cial and the licensee.

35 (2) EFFECTIVENESS.—A suspension or prohibition under paragraph  
36 (1)—

37 (A) shall become effective on service of notice under paragraph  
38 (1); and

39 (B) unless stayed by a court in proceedings under paragraph  
40 (3), shall remain in effect—

1 (i) until completion of the administrative proceedings pur-  
2 suant to a notice of intention to remove served under sub-  
3 section (a); 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 (3) JUDICIAL REVIEW.—Not later than 10 days after a management  
9 official is suspended from office or prohibited from participation in the  
10 management or conduct of the affairs of a licensee under paragraph  
11 (1), the management official may apply to the United States district  
12 court for the judicial district in which the principal place of business  
13 of the licensee is located, or the United States District Court for the  
14 District of Columbia, for a stay of the suspension or prohibition pend-  
15 ing the completion of the administrative proceedings pursuant to a no-  
16 tice of intention to remove served on the management official under  
17 subsection (a), and the court shall have jurisdiction to stay the suspen-  
18 sion or prohibition.

19 (c) SUSPENSION, OR PROHIBITION OF PARTICIPATION, ON CRIMINAL  
20 CHARGES.—

21 (1) IN GENERAL.—If a management official is charged, in an infor-  
22 mation, indictment, or complaint authorized by a United States attor-  
23 ney, with the commission of or participation in a felony involving dis-  
24 honesty or breach of trust, the Administrator may, by written notice  
25 served on the management official, suspend the management official  
26 from office or prohibit the management official from further participa-  
27 tion in any manner in the management or conduct of the affairs of the  
28 licensee, or both.

29 (2) EFFECTIVENESS.—A suspension or prohibition under paragraph  
30 (1) shall remain in effect—

31 (A) until the subject information, indictment, or complaint is fi-  
32 nally disposed of; or

33 (B) until it is terminated by the Administrator.

34 (3) CONVICTION.—If a judgment of conviction with respect to an of-  
35 fense described in paragraph (1) is entered against a management offi-  
36 cial, at such time as the judgment is not subject to further appellate  
37 review, the Administrator may issue and serve on the management offi-  
38 cial an order removing the management official from office, which re-  
39 moval shall become effective on service of a copy of the order on the  
40 licensee.

1 (4) DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or  
 2 other disposition of charges described in paragraph (1) shall not pre-  
 3 clude the Administrator from thereafter instituting proceedings to sus-  
 4 pend or remove the management official from office, or to prohibit the  
 5 management official from participation in the management or conduct  
 6 of the affairs of the licensee, or both, under subsection (a) or (b).

7 (d) PROCEDURE.—

8 (1) HEARING VENUE.—A hearing under this section shall be—

9 (A) held in the Federal judicial district or in the territory in  
 10 which the principal office of the licensee is located, unless the  
 11 party afforded the hearing consents to another place; and

12 (B) conducted in accordance with chapter 5 of title 5.

13 (2) ISSUANCE OF ORDERS.—After a hearing under this section, and  
 14 not later than 90 days after the Administrator notifies the parties that  
 15 the case has been submitted for final decision, the Administrator  
 16 shall—

17 (A) render a decision in the matter (which shall include findings  
 18 of fact on which the decision is predicated); and

19 (B) serve on each party to the proceeding an order or orders  
 20 consistent with this section.

21 (3) MODIFICATION OF ORDER.—The Administrator may modify, ter-  
 22 minate, or set aside an order issued under this section—

23 (A) at any time, on such notice, and in such manner as the Ad-  
 24 ministrator considers proper, unless a petition for review is timely  
 25 filed in a court of appeals of the United States, as provided in  
 26 paragraph (4)(B), and thereafter until the record in the pro-  
 27 ceeding has been filed in accordance with paragraph (4)(C); and

28 (B) on such filing of the record, with permission of the court.

29 (4) JUDICIAL REVIEW.—

30 (A) IN GENERAL.—Judicial review of an order issued under this  
 31 section shall be exclusively as provided in this subsection.

32 (B) PETITION FOR REVIEW.—A party to a hearing under this  
 33 section may obtain a review of an order issued under paragraph  
 34 (2) (other than an order issued with the consent of the manage-  
 35 ment official concerned or an order issued under subsection (c))  
 36 by filing in the court of appeals of the United States for the cir-  
 37 cuit in which the principal office of the licensee is located, or in  
 38 the United States Court of Appeals for the District of Columbia  
 39 Circuit, not later than 30 days after the date of service of the  
 40 order, a written petition praying that the order of the Adminis-  
 41 trator be modified, terminated, or set aside.

1 (C) NOTIFICATION TO THE ADMINISTRATOR.—A copy of a peti-  
 2 tion filed under subparagraph (B) shall be forthwith transmitted  
 3 by the clerk of the court to the Administrator, and thereupon the  
 4 Administrator shall file in the court the record in the proceeding,  
 5 as provided in section 2112 of title 28.

6 (D) COURT JURISDICTION.—On the filing of a petition under  
 7 subparagraph (B)—

8 (i) the court shall have jurisdiction, which, on the filing of  
 9 the record under subparagraph (C), shall be exclusive, to af-  
 10 firm, modify, terminate, or set aside, in whole or in part, the  
 11 order of the Administrator;

12 (ii) review of the proceedings shall be had as provided in  
 13 chapter 7 of title 5; and

14 (iii) the judgment and decree of the court shall be final, ex-  
 15 cept that the judgment and decree shall be subject to review  
 16 by the Supreme Court on certiorari as provided in section  
 17 1254 of title 28.

18 (E) JUDICIAL REVIEW NOT A STAY.—The commencement of  
 19 proceedings for judicial review under this paragraph shall not, un-  
 20 less specifically ordered by the court, operate as a stay of any  
 21 order issued by the Administrator under this section.

22 **§ 30321. Direct civil enforcement actions**

23 (a) FORFEITURE OF RIGHTS, PRIVILEGES, AND FRANCHISES.—

24 (1) IN GENERAL.—If a licensee violates or fails to comply with any  
 25 provision of this subtitle (including a regulation prescribed under this  
 26 subtitle), all of the licensee's rights, privileges, and franchises derived  
 27 from this subtitle may be forfeited.

28 (2) CIVIL ACTION.—Before a licensee is declared dissolved, or its  
 29 rights, privileges, and franchises forfeited, any noncompliance with or  
 30 violation of this subtitle shall be determined by a court of the United  
 31 States of competent jurisdiction in a civil action brought in the district,  
 32 territory, or other place subject to the jurisdiction of the United States  
 33 in which the principal office of the licensee is located. Any such civil  
 34 action shall be brought by the United States at the instance of the Ad-  
 35 ministrator or the Attorney General.

36 (b) INJUNCTIONS AND OTHER ORDERS.—

37 (1) IN GENERAL.—If a licensee or any other person engages or is  
 38 about to engage in an act or practice that constitutes or will constitute  
 39 a violation of any provision of this subtitle (including a regulation  
 40 under this subtitle) or of any order issued under this subtitle, the Ad-  
 41 ministrator may bring a civil action in a district court of the United

1 States or a United States court of any place subject to the jurisdiction  
 2 of the United States for an order enjoining the act or practice, or for  
 3 an order enforcing compliance with the provision, regulation, or order,  
 4 and the court shall have jurisdiction over the civil action and, on a  
 5 showing by the Administrator that the licensee or other person has en-  
 6 gaged or is about to engage in any such act or practice, a permanent  
 7 or temporary injunction, restraining order, or other order shall be  
 8 granted without bond.

9 (2) JURISDICTION OVER LICENSEE AND ASSETS OF THE LI-  
 10 CENSEE.—In a civil action under subsection (a), the court may, to such  
 11 extent as the court considers necessary, take exclusive jurisdiction of  
 12 the licensee and the assets of the licensee, wherever located, and the  
 13 court shall have jurisdiction to appoint a trustee or receiver to hold or  
 14 administer the assets of the licensee under the direction of the court.

15 (3) TRUSTEESHIP OR RECEIVERSHIP OVER LICENSEE.—On request  
 16 of the Administrator, the court may appoint the Administrator to act  
 17 as trustee or receiver of the licensee unless the court considers that  
 18 such an appointment would be inequitable or otherwise inappropriate  
 19 by reason of special circumstances involved in the civil action.

20 **§ 30322. Jurisdiction; service of process**

21 A civil action or other proceeding brought under section 30318(b)(4)(C),  
 22 30319, 30320, or 30321 of this title by the Administrator to enforce any  
 23 liability or duty created by, or to enjoin any violation of, this subtitle, or  
 24 any regulation or order promulgated under this subtitle shall be brought in  
 25 the district in which the licensee maintains its principal office, and process  
 26 in such cases may be served in any district in which the defendant main-  
 27 tains its principal office or transacts business, or wherever the defendant  
 28 may be found.

29 **CHAPTER 305—NEW MARKETS VENTURE CAPITAL**  
 30 **COMPANY PROGRAM**

Sec.

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31 **§ 30501. Definitions**

32 In this chapter:

1 (1) DEVELOPMENTAL VENTURE CAPITAL.—

2 (A) IN GENERAL.—The term “developmental venture capital”  
3 means capital in the form of an equity capital investment in a  
4 smaller enterprise made with a primary objective of fostering eco-  
5 nomic development in a low-income geographic area.

6 (B) EQUITY CAPITAL.—In subparagraph (A), the term “equity  
7 capital” has the meaning given the term in section 30304(g)(1)(B)  
8 of this title.

9 (2) ELIGIBLE COMPANY.—The term “eligible company” means a  
10 company that—

11 (A) is a newly formed for-profit entity or a newly formed for-  
12 profit subsidiary of an existing entity;

13 (B) has a management team with experience in community de-  
14 velopment financing or relevant venture capital financing; and

15 (C) has a primary objective of economic development of one or  
16 more low-income geographic areas.

17 (3) LOW-INCOME INDIVIDUAL.—The term “low-income individual”  
18 means an individual whose income (adjusted for family size) does not  
19 exceed—

20 (A) in the case of an individual residing in a metropolitan area,  
21 80 percent of the median income of all individuals residing in the  
22 metropolitan area; and

23 (B) in the case of an individual residing in a nonmetropolitan  
24 area, the greater of—

25 (i) 80 percent of the median income of all individuals resid-  
26 ing in the nonmetropolitan area; or

27 (ii) 80 percent of the median income of all individuals re-  
28 siding in all of the nonmetropolitan areas in the State in  
29 which the individual resides.

30 (4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term “new  
31 markets venture capital company” means a company that—

32 (A) has been granted final approval by the Administrator under  
33 section 30503(e) of this title; and

34 (B) has entered into a participation agreement with the Admin-  
35 istrator.

36 (5) OPERATIONAL ASSISTANCE.—The term “operational assistance”  
37 means management, marketing, and other technical assistance that as-  
38 sists a smaller enterprise with business development.

39 (6) PARTICIPATION AGREEMENT.—The term “participation agree-  
40 ment” means a participation agreement under section 30503(b)(4)(D)  
41 of this title.



1 (7) PROGRAM.—The term “program” means the new markets ven-  
2 ture capital company program.

3 (8) STATE.—The term “State” means a State, the District of Co-  
4 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the  
5 Northern Mariana Islands, and any other commonwealth, territory, or  
6 possession of the United States.

7 **§ 30502. Establishment of program**

8 (a) IN GENERAL.—The Administrator shall establish a developmental  
9 venture capital program to be known as the new markets venture capital  
10 company program—

11 (1) with the purpose of promoting economic development and cre-  
12 ating wealth and job opportunities in low-income geographic areas and  
13 among individuals living in low-income geographic areas by encouraging  
14 developmental venture capital investments in smaller enterprises pri-  
15 marily located in low-income geographic areas; and

16 (2) with the mission of addressing the unmet equity investment  
17 needs of smaller enterprises located in low-income geographic areas.

18 (b) ACTIVITIES.—Under the program, the Administrator may—

19 (1) enter into participation agreements with new markets venture  
20 capital companies under section 30503(b)(4)(D) of this title for the  
21 purposes described in subsection (a);

22 (2) guarantee debentures issued by new markets venture capital  
23 companies under section 30504 of this title; and

24 (3) make grants to new markets venture capital companies and spe-  
25 cialized small business investment companies under section 30507 of  
26 this title.

27 **§ 30503. Approval of new markets venture capital companies**

28 (a) APPLICATION.—To participate in the program as a new markets ven-  
29 ture capital company, an eligible company shall submit to the Administrator  
30 an application that includes—

31 (1) a business plan describing how the applicant intends to make  
32 successful developmental venture capital investments in identified low-  
33 income geographic areas;

34 (2) information regarding the community development finance or rel-  
35 evant venture capital qualifications and general reputation of the appli-  
36 cant’s management;

37 (3) a description of how the applicant intends to work with commu-  
38 nity organizations and to seek to address the unmet capital needs of  
39 the communities served;

40 (4) a proposal describing how the applicant intends to use the grant  
41 funds provided under this chapter to provide operational assistance to

1 smaller enterprises financed by the applicant, including information re-  
 2 garding whether the applicant intends to use licensed professionals,  
 3 when necessary, on the applicant's staff or from an outside entity;

4 (5) with respect to binding commitments to be made to the applicant  
 5 under this chapter, an estimate of the ratio of cash to in-kind contribu-  
 6 tions;

7 (6) a description of the criteria to be used to evaluate whether and  
 8 to what extent the applicant meets the objectives of the program;

9 (7) information regarding the management and financial strength of  
 10 any parent firm, affiliated firm, or any other firm essential to the suc-  
 11 cess of the applicant's business plan; and

12 (8) such other information as the Administrator may require.

13 (b) CONDITIONAL APPROVAL.—

14 (1) IN GENERAL.—From among eligible companies submitting appli-  
 15 cations under subsection (a), the Administrator shall conditionally ap-  
 16 prove applicants to participate in the program.

17 (2) SELECTION CRITERIA.—In conditionally approving eligible com-  
 18 panies under paragraph (1), the Administrator shall consider—

19 (A) the likelihood that an applicant will meet the goal of its  
 20 business plan;

21 (B) the experience and background of an applicant's manage-  
 22 ment team;

23 (C) the need for developmental venture capital investments in  
 24 the geographic areas in which an applicant intends to invest;

25 (D) the extent to which an applicant will concentrate its activi-  
 26 ties on serving the geographic areas in which the applicant intends  
 27 to invest;

28 (E) the likelihood that an applicant will be able to satisfy the  
 29 conditions under paragraph (4);

30 (F) the extent to which the activities proposed by an applicant  
 31 will expand economic opportunities in the geographic areas in  
 32 which the applicant intends to invest;

33 (G) the strength of the applicant's proposal to provide oper-  
 34 ational assistance as the proposal relates to the ability of the ap-  
 35 plicant to meet applicable cash requirements and properly use in-  
 36 kind contributions, including the use of resources for the services  
 37 of licensed professionals, when necessary, whether provided by em-  
 38 ployees or by contractors; and

39 (H) any other factor that the Administrator considers appro-  
 40 priate.

1           (3) NATIONWIDE DISTRIBUTION.—The Administrator shall select ap-  
2 plicants under paragraph (1) in a manner that promotes investment  
3 nationwide.

4           (4) REQUIREMENTS FOR FINAL APPROVAL.—

5           (A) SPECIFICATION OF DATE.—On granting conditional ap-  
6 proval of an applicant, the Administrator shall specify a date, not  
7 to exceed the date that is 2 years after the date of conditional ap-  
8 proval, by which the conditionally approved applicant shall satisfy  
9 the requirements stated in this paragraph.

10          (B) CAPITAL REQUIREMENT.—A conditionally approved appli-  
11 cant shall raise not less than \$5,000,000 of private capital or  
12 binding capital commitments from one or more investors (other  
13 than Federal agencies) that meet criteria established by the Ad-  
14 ministrator.

15          (C) NONADMINISTRATION RESOURCES FOR OPERATIONAL AS-  
16 SISTANCE.—

17           (i) IN GENERAL.—To provide operational assistance to  
18 smaller enterprises expected to be financed by a conditionally  
19 approved applicant, the conditionally approved applicant—

20           (I) shall have binding commitments (for contribution  
21 in cash or in kind)—

22           (aa) from any sources other than the Adminis-  
23 trator that meet criteria established by the Adminis-  
24 trator;

25           (bb) payable or available over a multiyear period  
26 that the Administrator considers appropriate (not to  
27 exceed 10 years); and

28           (cc) in an amount that is not less than 30 percent  
29 of the total amount of capital and commitments  
30 raised under subparagraph (B);

31           (II) shall have purchased from an insurance company  
32 acceptable to the Administrator, using funds (other than  
33 the funds raised under subparagraph (B)) from any  
34 source other than the Administrator, an annuity that  
35 yields cash payments over a multiyear period acceptable  
36 to the Administrator (not to exceed 10 years) in an  
37 amount that is not less than 30 percent of the total  
38 amount of capital and commitments raised under sub-  
39 paragraph (B); or

40           (III) shall have binding commitments (for contribu-  
41 tions in cash or in kind) of the type described in sub-

1 clause (I) and shall have purchased an annuity of the  
2 type described in subclause (II), which in the aggregate  
3 make available, over a multiyear period acceptable to the  
4 Administrator (not to exceed 10 years), an amount that  
5 is not less than 30 percent of the total amount of capital  
6 and commitments raised under subparagraph (B).

7 (ii) EXCEPTION.—On a showing of special circumstances  
8 and good cause, the Administrator may consider an applicant  
9 to satisfy the requirements of clause (i) if the applicant has—

10 (I) a viable plan that reasonably projects the capacity  
11 of the applicant to raise the amount (in cash or in-kind)  
12 required under clause (i); and

13 (II) binding commitments in an amount that is equal  
14 to not less than 20 percent of the amount required under  
15 clause (i).

16 (iii) LIMITATION.—To comply with the requirements of  
17 clauses (i) and (ii), the amount of in-kind contributions made  
18 by a conditionally approved applicant shall not exceed 50 per-  
19 cent of the total contributions made by the conditionally ap-  
20 proved applicant.

21 (D) PARTICIPATION AGREEMENT.—A conditionally approved ap-  
22 plicant shall enter into a participation agreement with the Admin-  
23 istrator that—

24 (i) details the conditionally approved applicant's operating  
25 plan and investment criteria; and

26 (ii) requires the conditionally approved applicant, after  
27 final approval under subsection (c), to make investments in  
28 smaller enterprises at least 80 percent of which are located  
29 in low-income geographic areas.

30 (c) FINAL APPROVAL.—The Administrator shall—

31 (1) grant final approval to a conditionally approved applicant to op-  
32 erate as a new markets venture capital company if the conditionally ap-  
33 proved applicant satisfies the requirements of paragraph (4) of sub-  
34 section (b) on or before the expiration of the date specified under sub-  
35 paragraph (A) of that paragraph; or

36 (2) if the conditionally approved applicant fails to satisfy those re-  
37 quirements on or before the expiration of that date, revoke the condi-  
38 tional approval granted under subsection (b).

1    **§ 30504. Guarantee of new markets venture capital company**  
2                    **debentures**

3           (a) IN GENERAL.—To enable a new markets venture capital company to  
4    make developmental venture capital investments in smaller enterprises in a  
5    low-income geographic area, the Administrator may guarantee the timely  
6    payment of principal and interest, as scheduled, on debentures issued by the  
7    new markets venture capital company.

8           (b) TERMS AND CONDITIONS.—The Administrator may make a guarantee  
9    under this section on such terms and conditions as the Administrator con-  
10   siders appropriate, except that the term of any debenture guaranteed under  
11   this section shall not exceed 15 years.

12          (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
13   and credit of the United States is pledged to pay all amounts that may be  
14   required to be paid under any guarantee under this chapter.

15          (d) MAXIMUM AMOUNT OF GUARANTEE.—

16           (1) IN GENERAL.—The Administrator may guarantee the debentures  
17   issued by a new markets venture capital company only to the extent  
18   that the total face amount of outstanding guaranteed debentures of the  
19   new markets venture capital company does not exceed 150 percent of  
20   the private capital of the new markets venture capital company, as de-  
21   termined by the Administrator.

22           (2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of  
23   paragraph (1), private capital may include capital that is considered to  
24   be Federal funds (within the meaning of section 30101(15)(C)(iii) of  
25   this title) if the capital is contributed by an investor other than a Fed-  
26   eral agency.

27    **§ 30505. Trust certificates**

28          (a) ISSUANCE.—

29           (1) IN GENERAL.—The Administrator, acting directly or through an  
30   agent, may issue trust certificates representing ownership of all or a  
31   fractional part of debentures issued by a new markets venture capital  
32   company and guaranteed by the Administrator under section 30504 of  
33   this title.

34           (2) TRUST OR POOL.—Trust certificates issued under paragraph (1)  
35   shall be based on and backed by a trust or pool approved by the Ad-  
36   ministrator and composed solely of guaranteed debentures.

37          (b) GUARANTEE.—

38           (1) IN GENERAL.—The Administrator may, under such terms and  
39   conditions as the Administrator considers appropriate, guarantee the  
40   timely payment of the principal of and interest on trust certificates

1 issued by the Administrator or an agent of the Administrator under  
2 this section.

3 (2) LIMITATION.—A guarantee under this subsection shall be limited  
4 to the extent of principal and interest on the guaranteed debentures  
5 that compose the trust or pool.

6 (3) PREPAYMENT OR DEFAULT.—

7 (A) IN GENERAL.—In the event that a debenture in a trust or  
8 pool is prepaid, or in the event of default of such a debenture, the  
9 guarantee of timely payment of principal and interest on the trust  
10 certificates shall be reduced in proportion to the amount of prin-  
11 cipal and interest that the prepaid debenture represents in the  
12 trust or pool.

13 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-  
14 benture shall accrue and be guaranteed by the Administrator only  
15 through the date of payment of the guarantee.

16 (C) CALL.—At any time during the term of a trust certificate,  
17 a trust certificate may be called for redemption due to prepayment  
18 or default of all debentures that compose the trust or pool.

19 (e) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
20 and credit of the United States is pledged to pay all amounts that may be  
21 required to be paid under any guarantee of a trust certificate issued by the  
22 Administrator or an agent of the Administrator under this section.

23 (d) FEES.—The Administrator shall not collect a fee for any guarantee  
24 of a trust certificate under this section, but an agent of the Administrator  
25 may collect a fee approved by the Administrator for the functions described  
26 in subsection (f)(2).

27 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

28 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
29 antee issued under this section, the Administrator shall be subrogated  
30 fully to the rights satisfied by the payment.

31 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-  
32 clude or limit the exercise by the Administrator of the ownership rights  
33 of the Administrator in the debentures residing in a trust or pool  
34 against which trust certificates are issued under this section.

35 (f) MANAGEMENT AND ADMINISTRATION.—

36 (1) REGISTRATION.—The Administrator may provide for a central  
37 registration of all trust certificates issued under this section.

38 (2) CONTRACTING OF FUNCTIONS.—

39 (A) IN GENERAL.—The Administrator may contract with one or  
40 more agents to carry out on behalf of the Administrator the pool-

1           ing and the central registration functions provided for in this sec-  
2           tion including, notwithstanding any other provision of law—

3                 (i) maintenance, on behalf of and under the direction of the  
4                 Administrator, of such commercial bank accounts or invest-  
5                 ments in obligations of the United States as may be necessary  
6                 to facilitate the creation of trusts or pools backed by debent-  
7                 ures guaranteed under section 30504 of this title; and

8                 (ii) the issuance of trust certificates to facilitate the cre-  
9                 ation of such trusts or pools.

10            (B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent  
11            performing functions on behalf of the Administrator under this  
12            paragraph shall provide a fidelity bond or insurance in such  
13            amounts as the Administrator determines to be necessary to fully  
14            protect the interests of the United States.

15            (3) REGULATION OF BROKERS AND DEALERS.—The Administrator  
16            may regulate brokers and dealers in trust certificates issued under this  
17            section.

18            (4) FORM OF REGISTRATION.—This subsection does not preclude the  
19            use of a book-entry or other electronic form of registration for trust  
20            certificates issued under this section.

21    **§ 30506. Fees**

22            Except as provided in section 30505(d) of this title, the Administrator  
23            may charge such fees as the Administrator considers appropriate with re-  
24            spect to any guarantee or grant issued under this chapter.

25    **§ 30507. Operational assistance grants**

26            (a) IN GENERAL.—

27                 (1) AUTHORITY.—The Administrator may make a grant to a new  
28                 markets venture capital company or specialized small business invest-  
29                 ment company to enable the new markets venture capital company or  
30                 specialized small business investment company to provide operational  
31                 assistance to smaller enterprises financed, or expected to be financed,  
32                 by the new markets venture capital company or specialized small busi-  
33                 ness investment company.

34                 (2) TERMS.—A grant under this subsection shall be made over a  
35                 multiyear period not to exceed 10 years, under such other terms as the  
36                 Administrator may require.

37                 (3) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

38                         (A) SUBMISSION OF PLAN.—A specialized small business invest-  
39                         ment company shall be eligible for a grant under this section only  
40                         if the specialized small business investment company submits to

1 the Administrator, in such form and manner as the Administrator  
2 may require, a plan for use of the grant.

3 (B) USE OF FUNDS.—The proceeds of a grant made to a spe-  
4 cialized small business investment company under this subsection  
5 shall be used by the specialized small business investment com-  
6 pany only to provide operational assistance in connection with an  
7 equity investment made with capital raised after December 21,  
8 2000, in a smaller enterprise located in a low-income geographic  
9 area.

10 (4) GRANT AMOUNT.—

11 (A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The  
12 amount of a grant made under this subsection to a new markets  
13 venture capital company shall be equal to the amount of resources  
14 (in cash or in kind) raised by the new markets venture capital  
15 company under section 30503(b)(4)(B) of this title.

16 (B) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—  
17 The amount of a grant made under this subsection to a specialized  
18 small business investment company shall be equal to the resources  
19 (in cash or in kind) raised by the entity in accordance with the  
20 requirements applicable to new markets venture capital companies  
21 under section 305053(b)(4)(C) of this title.

22 (5) PRO RATA REDUCTIONS.—If the amount made available to carry  
23 out this section is insufficient for the Administrator to provide grants  
24 in the amounts provided for in paragraph (4), the Administrator shall  
25 make pro rata reductions in the amounts otherwise payable to each new  
26 markets venture capital company and specialized small business invest-  
27 ment company under that paragraph.

28 (b) SUPPLEMENTAL GRANTS.—

29 (1) IN GENERAL.—The Administrator may make a supplemental  
30 grant to a new markets venture capital company or specialized small  
31 business investment company under such terms as the Administrator  
32 may require, to provide additional operational assistance to smaller en-  
33 terprises financed, or expected to be financed, by the new markets ven-  
34 ture capital company or specialized small business investment company.

35 (2) MATCHING REQUIREMENT.—The Administrator may require, as  
36 a condition of a supplemental grant under this subsection, that the new  
37 markets venture capital company or specialized small business invest-  
38 ment company receiving the grant provide from resources (in cash or  
39 in kind), other than those provided by the Administrator, a matching  
40 contribution equal to the amount of the supplemental grant.



1 (c) LIMITATION.—None of the assistance made available under this sec-  
2 tion may be used for any overhead or general and administrative expense  
3 of a new markets venture capital company or a specialized small business  
4 investment company.

5 **§ 30508. Bank participation**

6 (a) IN GENERAL.—Except as provided in subsection (b), a national bank,  
7 a member bank of the Federal Reserve System, and (to the extent permitted  
8 under applicable State law) an insured bank that is not a member of the  
9 Federal Reserve System may invest in a new markets venture capital com-  
10 pany or in an entity established to invest solely in new markets venture cap-  
11 ital companies.

12 (b) LIMITATION.—A bank described in subsection (a) shall not make in-  
13 vestments described in that subsection in a total amount that is greater  
14 than 5 percent of the capital and surplus of the bank.

15 **§ 30509. Reporting requirement**

16 A new markets venture capital company that participates in the program  
17 shall provide the Administrator such information as the Administrator may  
18 require, including—

19 (1) information relating to the measurement criteria that the new  
20 markets venture capital company proposed in its program application;  
21 and

22 (2) in each case in which the new markets venture capital company  
23 makes, under this chapter, an investment in, or a loan or grant to, a  
24 business that is not located in a low-income geographic area, a report  
25 on the number and percentage of employees of the business who reside  
26 in a low-income geographic area.

27 **§ 30510. Regulations**

28 The Administrator may issue such regulations as the Administrator con-  
29 siderers necessary to carry out this chapter.

30 **§ 30511. Unlawful acts and omissions**

31 (a) PERSONS DEEMED TO COMMIT VIOLATION.—If a new markets ven-  
32 ture capital company violates any provision of this subtitle (including a reg-  
33 ulation issued under this subtitle) or of a participation agreement by reason  
34 of the new markets venture capital company's failure to comply with terms  
35 of this subtitle (including a regulation) or of the participation agreement,  
36 or by reason of the new markets venture capital company's engaging in any  
37 act or practice that constitutes or will constitute a violation of this subtitle  
38 (including a regulation) or of the participation agreement, the violation shall  
39 also be deemed to be a violation and an unlawful act committed by any per-  
40 son that, directly or indirectly, authorizes, orders, participates in, causes,  
41 brings about, counsels, aids, or abets in the commission of the act, practice,

1 or transaction that constitutes or will constitute, in whole or in part, the  
2 violation.

3 (b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer,  
4 director, employee, agent, or other participant in the management or con-  
5 duct of the affairs of a new markets venture capital company to engage in  
6 any act or practice, or to omit any act or practice, in breach of the person’s  
7 fiduciary duty as officer, director, employee, agent, or participant if, as a  
8 result of the act, practice, or omission, the new markets venture capital  
9 company suffers or is in imminent danger of suffering financial loss or other  
10 damage.

11 (c) OTHER UNLAWFUL ACTS.—Except with the written consent of the  
12 Administrator, it shall be unlawful—

13 (1) for any person to take office as an officer, director, or employee  
14 of a new markets venture capital company, or to become an agent or  
15 participant in the conduct of the affairs or management of a new mar-  
16 kets venture capital company, if the person—

17 (A) has been convicted of—

18 (i) a felony; or

19 (ii) any other criminal offense involving dishonesty or  
20 breach of trust; or

21 (B) has been found civilly liable in damages, or has been perma-  
22 nently or temporarily enjoined by an order, judgment, or decree  
23 of a court of competent jurisdiction, by reason of any act or prac-  
24 tice involving fraud or breach of trust; or

25 (2) for any person to continue to serve in any of the capacities de-  
26 scribed in paragraph (1), if—

27 (A) the person is convicted of—

28 (i) a felony; or

29 (ii) any other criminal offense involving dishonesty or  
30 breach of trust; or

31 (B) the person is found civilly liable in damages, or is perma-  
32 nently or temporarily enjoined by an order, judgment, or decree  
33 of a court of competent jurisdiction, by reason of any act or prac-  
34 tice involving fraud or breach of trust.

35 **§ 30512. Examinations**

36 (a) IN GENERAL.—A new markets venture capital company that partici-  
37 pates in the program shall be subject to examinations made at the direction  
38 of the Investment Division of the Administration in accordance with this  
39 section and modeled after oversight developed for the small business invest-  
40 ment company program.

1 (b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under  
 2 this section may be conducted with the assistance of a private sector entity  
 3 that has both the qualifications and the expertise necessary to conduct such  
 4 an examination.

5 (c) COSTS.—

6 (1) IN GENERAL.—The Administrator may assess the cost of an ex-  
 7 amination under this section (including compensation of an examiner)  
 8 against the new markets venture capital company examined.

9 (2) PAYMENT.—A new markets venture capital company against  
 10 which the Administrator assesses costs under this paragraph shall pay  
 11 the costs.

12 (d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall  
 13 be deposited in the account for salaries and expenses of the Administration.

14 **§ 30513. Removal or suspension of directors or officers**

15 Using the procedures for removing or suspending a director or an officer  
 16 of a licensee under section 30320 of this title (to the extent that those pro-  
 17 cedures are not inconsistent with the requirements of this chapter), the Ad-  
 18 ministrator may remove or suspend a director or officer of a new markets  
 19 venture capital company.

20 **§ 30514. Direct civil enforcement actions**

21 (a) FORFEITURE OF RIGHTS AND PRIVILEGES.—

22 (1) IN GENERAL.—With respect to a new markets venture capital  
 23 company that violates or fails to comply with any of the provisions of  
 24 this subtitle (including a regulation issued under this subtitle) or of  
 25 any participation agreement, the Administrator may—

26 (A) void the participation agreement between the Administrator  
 27 and the new markets venture capital company; and

28 (B) cause the new markets venture capital company to forfeit  
 29 all of the rights and privileges derived by the new markets venture  
 30 capital company from this subtitle.

31 (2) ADJUDICATION OF NONCOMPLIANCE.—

32 (A) IN GENERAL.—Before the Administrator may cause a new  
 33 markets venture capital company to forfeit rights or privileges  
 34 under paragraph (1), a court of the United States of competent  
 35 jurisdiction shall find that the new markets venture capital com-  
 36 pany committed a violation, or failed to comply, in a civil action  
 37 brought for that purpose in the district, territory, or other place  
 38 subject to the jurisdiction of the United States in which the prin-  
 39 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 a district  
 10 court of the United States or a United States court of any place sub-  
 11 ject to the jurisdiction of the United States for an order enjoining the  
 12 act 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.

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- 30703. Approval of renewable fuel capital investment companies.
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- 30709. Reporting requirement.
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30712. Conflicts of interest; unlawful acts and omissions by officers, directors, employees, and agents; revocation and suspensions of licenses; cease and desist orders; injunctions and other orders.
30713. Removal or suspension of directors or officers.
30714. Termination.

1     **§ 30701. 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 30703(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 30703(e) 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    30703(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.

1 (8) VENTURE CAPITAL.—The term “venture capital” means capital  
2 in the form of equity capital (as defined in section 30304(g)(1)(B) of  
3 this title) investments.

4 **§ 30702. Establishment of program**

5 (a) IN GENERAL.—The Administrator shall establish a renewable fuel  
6 capital investment program—

7 (1) with the purpose of promoting the research, development, manu-  
8 facture, production, and bringing to market of goods, products, or serv-  
9 ices that generate or support the production of renewable energy by en-  
10 couraging venture capital investments in smaller enterprises primarily  
11 engaged such activities; and

12 (2) with the mission of addressing the unmet equity investment  
13 needs of smaller enterprises engaged in researching, developing, manu-  
14 facturing, producing, and bringing to market goods, products, or serv-  
15 ices that generate or support the production of renewable energy.

16 (b) ACTIVITIES.—Under the program, the Administrator may—

17 (1) enter into participation agreements with renewable fuel capital  
18 investment companies under section 30703(b)(4)(D) of this title for the  
19 purposes described in subsection (a);

20 (2) guarantee debentures issued by renewable fuel capital investment  
21 companies under section 30704 of this title; and

22 (3) make grants to renewable fuel investment capital companies  
23 under section 30707 of this title.

24 **§ 30703. Approval of renewable fuel capital investment com-  
25 panies**

26 (a) APPLICATION.—An eligible company desiring to be designated as a re-  
27 newable fuel capital investment company shall submit to the Administrator  
28 an application that includes—

29 (1) a business plan describing how the applicant intends to make  
30 successful venture capital investments in smaller enterprises primarily  
31 engaged in the research, manufacture, development, production, or  
32 bringing to market of goods, products, or services that generate or sup-  
33 port the production of renewable energy;

34 (2) information regarding the relevant venture capital qualifications  
35 and general reputation of the applicant’s management;

36 (3) a description of how the applicant intends to seek to address the  
37 unmet capital needs of the smaller enterprises served;

38 (4) a proposal describing how the applicant intends to use the grant  
39 funds provided under this chapter to provide operational assistance to  
40 smaller enterprises financed by the applicant, including information re-  
41 garding whether the applicant has employees with appropriate profes-

1 sional licenses or will contract with another entity when the services of  
2 such an individual are necessary;

3 (5) with respect to binding commitments to be made to the applicant  
4 under this chapter, an estimate of the ratio of cash to in-kind contribu-  
5 tions;

6 (6) a description of whether and to what extent the applicant meets  
7 the criteria under subsection (b)(2) and the objectives of the program;

8 (7) information regarding the management and financial strength of  
9 any parent firm, affiliated firm, or any other firm essential to the suc-  
10 cess of the applicant's business plan; and

11 (8) such other information as the Administrator may require.

12 (b) CONDITIONAL APPROVAL.—

13 (1) IN GENERAL.—From among eligible companies submitting appli-  
14 cations under subsection (a), the Administrator shall conditionally ap-  
15 prove applicants to operate as renewable fuel capital investment compa-  
16 nies.

17 (2) SELECTION CRITERIA.—In conditionally approving companies  
18 under paragraph (1), the Administrator shall consider—

19 (A) the likelihood that an applicant will meet the goal of its  
20 business plan;

21 (B) the experience and background of an applicant's manage-  
22 ment team;

23 (C) the need for venture capital investments in the geographic  
24 areas in which an applicant intends to invest;

25 (D) the extent to which an applicant will concentrate its activi-  
26 ties on serving the geographic areas in which the applicant intends  
27 to invest;

28 (E) the likelihood that an applicant will be able to satisfy the  
29 conditions under paragraph (4);

30 (F) the extent to which the activities proposed by the applicant  
31 will expand economic opportunities in the geographic areas in  
32 which the company intends to invest;

33 (G) the strength of the applicant's proposal to provide oper-  
34 ational assistance as the proposal relates to the ability of the ap-  
35 plicant to meet applicable cash requirements and properly use in-  
36 kind contributions, including the use of resources for the services  
37 of licensed professionals, when necessary, whether provided by em-  
38 ployees or by contractors; and

39 (H) any other factor that the Administrator considers appro-  
40 priate.

1           (3) NATIONWIDE DISTRIBUTION.—From among eligible companies  
2 submitting applications under subsection (a), the Administrator shall  
3 consider the selection criteria under paragraph (2) and shall, to the  
4 maximum extent practicable, approve at least one applicant from each  
5 geographic region of the Administration.

6           (4) REQUIREMENTS FOR FINAL APPROVAL.—

7           (A) IN GENERAL.—On granting conditional approval of an ap-  
8 plicant, the Administrator shall grant each conditionally approved  
9 applicant 2 years to satisfy the requirements stated in this para-  
10 graph.

11           (B) CAPITAL REQUIREMENT.—A conditionally approved appli-  
12 cant shall raise not less than \$3,000,000 of private capital or  
13 binding capital commitments from one or more investors (other  
14 than Federal agencies) that meet criteria established by the Ad-  
15 ministrator.

16           (C) NONADMINISTRATION RESOURCES FOR OPERATIONAL AS-  
17 SISTANCE.—

18           (i) IN GENERAL.—To provide operational assistance to  
19 smaller enterprises expected to be financed by the applicant,  
20 a conditionally approved applicant shall have binding commit-  
21 ments (for contribution in cash or in-kind)—

22           (I) from any source other than the Administrator that  
23 meet criteria established by the Administrator; and

24           (II) payable or available over a multiyear period that  
25 the Administrator considers appropriate (not to exceed  
26 10 years).

27           (ii) EXCEPTION.—On a showing of special circumstances  
28 and good cause, the Administrator may consider an applicant  
29 to satisfy the requirements of clause (i) if the applicant has—

30           (I) a viable plan that reasonably projects the capacity  
31 of the applicant to raise the amount (in cash or in-kind)  
32 required under clause (i); and

33           (II) binding commitments in an amount that is equal  
34 to not less than 20 percent of the amount required under  
35 clause (i).

36           (iii) LIMITATION.—To comply with the requirements of  
37 clauses (i) and (ii), the amount of in-kind contributions made  
38 by a conditionally approved applicant shall not exceed 50 per-  
39 cent of the total contributions made by the conditionally ap-  
40 proved applicant.



1 (D) PARTICIPATION AGREEMENT.—A conditionally approved ap-  
 2 plicant shall enter into a participation agreement with the Admin-  
 3 istrator that—

4 (i) details the conditionally approved applicant’s operating  
 5 plan and investment criteria; and

6 (ii) requires the conditionally approved applicant, after  
 7 final approval under subsection (c), to make investments in  
 8 smaller enterprises primarily engaged in researching, manu-  
 9 facturing, developing, producing, or bringing to market goods,  
 10 products, or services that generate or support the production  
 11 of renewable energy.

12 (c) FINAL APPROVAL.—The Administrator shall, with respect to each ap-  
 13 plicant conditionally approved under subsection (c)—

14 (1) grant final approval to the conditionally approved applicant to  
 15 operate as a renewable fuel capital investment company if the condi-  
 16 tionally approved applicant satisfies the requirements of paragraph (4)  
 17 of subsection (b) on or before the expiration of the time period de-  
 18 scribed in that subsection; or

19 (2) if the conditionally approved applicant fails to satisfy those re-  
 20 quirements on or before the expiration of that time period, revoke the  
 21 conditional approval granted under subsection (b).

22 **§ 30704. Guarantee of renewable fuel capital investment**  
 23 **company debentures**

24 (a) IN GENERAL.—To enable a renewable fuel capital investment com-  
 25 pany to make venture capital investments in smaller enterprises engaged in  
 26 the research, development, manufacture, production, and bringing to market  
 27 of goods, products, or services that generate or support the production of  
 28 renewable energy, the Administrator may guarantee the timely payment of  
 29 principal and interest, as scheduled, on debentures issued by the renewable  
 30 fuel capital investment company.

31 (b) TERMS AND CONDITIONS.—The Administrator may make a guarantee  
 32 under this section on such terms and conditions as the Administrator con-  
 33 siders appropriate, except that—

34 (1) the term of any debenture guaranteed under this section shall  
 35 not exceed 15 years; and

36 (2) a debenture guaranteed under this section—

37 (A) shall carry no front-end or annual fees;

38 (B) shall be issued at a discount;

39 (C) shall require no interest payments during the 5-year period  
 40 beginning on the date on which the debenture is issued;

1 (D) shall be prepayable without penalty after the end of the  
 2 one-year period beginning on the date on which the debenture is  
 3 issued; and

4 (E) shall require semiannual interest payments after the period  
 5 described in subparagraph (C).

6 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
 7 and credit of the United States is pledged to pay all amounts that may be  
 8 required to be paid under any guarantee under this chapter.

9 (d) MAXIMUM AMOUNT OF GUARANTEE.—

10 (1) IN GENERAL.—The Administrator may guarantee the debentures  
 11 issued by a renewable fuel capital investment company only to the ex-  
 12 tent that the total face amount of outstanding guaranteed debentures  
 13 of the renewable fuel capital investment company does not exceed 150  
 14 percent of the private capital of the renewable fuel capital investment  
 15 company, as determined by the Administrator.

16 (2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of  
 17 paragraph (1), private capital may include capital that is considered to  
 18 be Federal funds (within the meaning of section 30101(15)(C)(iii) of  
 19 this title) if the capital is contributed by an investor other than a Fed-  
 20 eral agency.

21 **§ 30705. Trust certificates**

22 (a) ISSUANCE.—

23 (1) IN GENERAL.—The Administrator, acting directly or through an  
 24 agent, may issue trust certificates representing ownership of all or a  
 25 fractional part of debentures issued by a renewable fuel capital invest-  
 26 ment company and guaranteed by the Administrator under section  
 27 30704 of this title.

28 (2) TRUST OR POOL.—Trust certificates issued under paragraph (1)  
 29 shall be based on and backed by a trust or pool approved by the Ad-  
 30 ministrator and composed solely of guaranteed debentures.

31 (b) GUARANTEE.—

32 (1) IN GENERAL.—The Administrator may, under such terms and  
 33 conditions as the Administrator considers appropriate, guarantee the  
 34 timely payment of the principal of and interest on trust certificates  
 35 issued by the Administrator or an agent of the Administrator under  
 36 this section.

37 (2) LIMITATION.—A guarantee under this subsection shall be limited  
 38 to the extent of principal and interest on the guaranteed debentures  
 39 that compose the trust or pool.

40 (3) PREPAYMENT OR DEFAULT.—

1 (A) IN GENERAL.—In the event that a debenture in a trust or  
2 pool is prepaid, or in the event of default of such a debenture, the  
3 guarantee of timely payment of principal and interest on the trust  
4 certificates shall be reduced in proportion to the amount of prin-  
5 cipal and interest that the prepaid debenture represents in the  
6 trust or pool.

7 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-  
8 benture shall accrue and be guaranteed by the Administrator only  
9 through the date of payment of the guarantee.

10 (C) CALL.—At any time during the term of a trust certificate,  
11 a trust certificate may be called for redemption due to prepayment  
12 or default of all debentures that compose the trust or pool.

13 (e) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
14 and credit of the United States is pledged to pay all amounts that may be  
15 required to be paid under any guarantee of a trust certificate issued by the  
16 Administrator or an agent of the Administrator under this section.

17 (d) FEES.—The Administrator shall not collect a fee for any guarantee  
18 of a trust certificate under this section, but an agent of the Administrator  
19 may collect a fee approved by the Administrator for the functions described  
20 in subsection (f)(2).

21 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

22 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
23 antee issued under this section, the Administrator shall be subrogated  
24 fully to the rights satisfied by the payment.

25 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-  
26 clude or limit the exercise by the Administrator of the ownership rights  
27 of the Administrator in the debentures residing in a trust or pool  
28 against which trust certificates are issued under this section.

29 (f) MANAGEMENT AND ADMINISTRATION.—

30 (1) REGISTRATION.—The Administrator may provide for a central  
31 registration of all trust certificates issued under this section.

32 (2) CONTRACTING OF FUNCTIONS.—

33 (A) IN GENERAL.—The Administrator may contract with one or  
34 more agents to carry out on behalf of the Administrator the pool-  
35 ing and the central registration functions provided for in this sec-  
36 tion including, notwithstanding any other provision of law—

37 (i) maintenance, on behalf of and under the direction of the  
38 Administrator, of such commercial bank accounts or invest-  
39 ments in obligations of the United States as may be necessary  
40 to facilitate the creation of trusts or pools backed by deben-  
41 tures guaranteed under section 30704 of this title; and

1 (ii) the issuance of trust certificates to facilitate the cre-  
2 ation of such trusts or pools.

3 (B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent  
4 performing functions on behalf of the Administrator under this  
5 paragraph shall provide a fidelity bond or insurance in such  
6 amounts as the Administrator determines to be necessary to fully  
7 protect the interests of the United States.

8 (3) REGULATION OF BROKERS AND DEALERS.—The Administrator  
9 may regulate brokers and dealers in trust certificates issued under this  
10 section.

11 (4) FORM OF REGISTRATION.—This subsection does not preclude the  
12 use of a book-entry or other electronic form of registration for trust  
13 certificates issued under this section.

14 **§ 30706. Fees**

15 (a) IN GENERAL.—Except as provided in section 30705(d) of this title,  
16 the Administrator may charge such fees as the Administrator considers ap-  
17 propriate with respect to any guarantee or grant issued under this chapter,  
18 in an amount established annually by the Administrator, as necessary to re-  
19 duce to zero the cost (as defined in section 502 of the Federal Credit Re-  
20 form Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and  
21 guaranteeing debentures under this chapter, which amounts shall be paid  
22 to and retained by the Administrator.

23 (b) OFFSET.—The Administrator may, as provided by subsection (c), off-  
24 set fees charged and collected under subsection (a).

25 (c) FEE CONTRIBUTION.—

26 (1) IN GENERAL.—To the extent that amounts are made available  
27 to the Administrator for the purpose of fee contributions, the Adminis-  
28 trator shall contribute to fees paid by the renewable fuel capital invest-  
29 ment companies under subsection (a).

30 (2) ANNUAL ADJUSTMENT.—Each fee contribution under paragraph  
31 (1) shall be effective for one fiscal year and shall be adjusted as nec-  
32 essary for each fiscal year thereafter to ensure that amounts under  
33 paragraph (1) are fully used. The fee contribution for a fiscal year  
34 shall be based on the outstanding commitments made and the guaran-  
35 tees and grants that the Administrator projects will be made during  
36 the fiscal year, given the program level authorized by law for that fiscal  
37 year and any other factors that the Administrator considers appro-  
38 priate.

39 **§ 30707. Operational assistance grants**

40 (a) IN GENERAL.—

1           (1) AUTHORITY.—The Administrator may make a grant to a renew-  
2           able fuel capital investment company to enable the renewable fuel cap-  
3           ital investment company to provide operational assistance to smaller  
4           enterprises financed, or expected to be financed, by the renewable fuel  
5           capital investment company.

6           (2) TERMS.—A grant under this subsection shall be made over a  
7           multiyear period not to exceed 10 years, under such other terms as the  
8           Administrator may require.

9           (3) GRANT AMOUNT.—The amount of a grant made under this sub-  
10          section to a renewable fuel capital investment company shall be equal  
11          to the lesser of—

12                (A) 10 percent of the resources (in cash or in kind) raised by  
13                the renewable fuel capital investment company under section  
14                30703(b)(4)(B) of this title; or

15                (B) \$1,000,000.

16          (4) PRO RATA REDUCTIONS.—If the amount made available to carry  
17          out this section is insufficient for the Administrator to provide grants  
18          in the amounts provided for in paragraph (3), the Administrator shall  
19          make pro rata reductions in the amounts otherwise payable to each re-  
20          newable fuel capital investment company under that paragraph.

21          (5) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

22                (A) IN GENERAL.—Subject to subparagraphs (B) and (C), on  
23                the request of a renewable fuel capital investment company condi-  
24                tionally approved under section 30703(b) of this title, the Admin-  
25                istrator shall make a grant to the renewable fuel capital invest-  
26                ment company under this subsection.

27                (B) REPAYMENT BY RENEWABLE FUEL CAPITAL INVESTMENT  
28                COMPANIES NOT FINALLY APPROVED.—If a renewable fuel capital  
29                investment company receives a grant under this paragraph and  
30                does not enter into a participation agreement for final approval,  
31                the renewable fuel capital investment company shall, subject to  
32                controlling Federal law, repay the amount of the grant to the Ad-  
33                ministrator.

34                (C) DEDUCTION OF GRANT TO APPROVED COMPANY.—If a re-  
35                newable fuel capital investment company receives a grant under  
36                this paragraph and receives final approval under section 30703(c)  
37                of this title, the Administrator shall deduct the amount of the  
38                grant from the total grant amount that the renewable fuel capital  
39                investment company receives for operational assistance.

1 (D) AMOUNT OF GRANT.—No renewable fuel capital investment  
2 company may receive a grant of more than \$100,000 under this  
3 paragraph.

4 (b) SUPPLEMENTAL GRANTS.—

5 (1) IN GENERAL.—The Administrator may make a supplemental  
6 grant to a renewable fuel capital investment company under such terms  
7 as the Administrator may require, to provide additional operational as-  
8 sistance to smaller enterprises financed, or expected to be financed, by  
9 the renewable fuel capital investment company.

10 (2) MATCHING REQUIREMENT.—The Administrator may require, as  
11 a condition of a supplemental grant under this subsection, that the re-  
12 newable fuel capital investment company receiving the grant provide  
13 from resources (in cash or in kind), other than those provided by the  
14 Administrator, a matching contribution equal to the amount of the sup-  
15 plemental grant.

16 (c) LIMITATION.—None of the assistance made available under this sec-  
17 tion may be used for any overhead or general and administrative expense  
18 of a renewable fuel capital investment company.

19 **§ 30708. Bank participation**

20 (a) IN GENERAL.—Except as provided in subsection (b), a national bank,  
21 a member bank of the Federal Reserve System, and (to the extent permitted  
22 under applicable State law) an insured bank that is not a member of the  
23 Federal Reserve System may invest in any renewable fuel capital investment  
24 company or in any entity established to invest solely in renewable fuel cap-  
25 ital investment companies.

26 (b) LIMITATION.—A bank described in subsection (a) shall not make in-  
27 vestments described in that subsection in a total amount that is greater  
28 than 5 percent of the capital and surplus of the bank.

29 **§ 30709. Reporting requirement**

30 A renewable fuel capital investment company that participates in the pro-  
31 gram shall provide the Administrator such information as the Administrator  
32 may require, including—

33 (1) information relating to the measurement criteria that the renew-  
34 able fuel capital investment company proposed in its program applica-  
35 tion; and

36 (2) in each case in which the renewable fuel capital investment com-  
37 pany makes, under this chapter, an investment in, or a loan or a grant  
38 to, a business that is not primarily engaged in the research, develop-  
39 ment, manufacture, or bringing to market or renewable energy sources,  
40 a report on the nature, origin, and revenues of the business in which  
41 investments are made.

1    **§ 30710. Regulations**

2       The Administrator may issue such regulations as the Administrator con-  
3       siders necessary to carry out this chapter.

4    **§ 30711. Examinations**

5       (a) IN GENERAL.—A renewable fuel capital investment company that par-  
6       ticipates in the program shall be subject to examinations made at the direc-  
7       tion of the Investment Division of the Administration in accordance with  
8       this section and modeled after oversight developed for the small business in-  
9       vestment company program.

10      (b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under  
11      this section may be conducted with the assistance of a private sector entity  
12      that has both the qualifications and the expertise necessary to conduct such  
13      an examination.

14      (c) COSTS.—

15          (1) IN GENERAL.—The Administrator may assess the cost of an ex-  
16          amination under this section (including compensation of an examiner)  
17          against the renewable fuel capital investment company examined.

18          (2) PAYMENT.—A renewable fuel capital investment company  
19          against which the Administrator assesses costs under this paragraph  
20          shall pay the costs.

21      (d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall  
22      be deposited in the account for salaries and expenses of the Administration.

23    **§ 30712. Conflicts of interest; unlawful acts and omissions;**  
24            **revocation and suspensions of licenses; cease and**  
25            **desist orders; injunctions and other orders**

26      (a) ACTIONS AND PROCEDURES UNDER OTHER PROVISIONS.—To the ex-  
27      tent that the actions and procedures described in sections 30313, 30317,  
28      30319, and 30321(b) of this title are not inconsistent with the requirements  
29      of this chapter, the Administrator may take those actions under those proce-  
30      dures in carrying out this chapter.

31      (b) APPLICABILITY OF REQUIREMENTS UNDER OTHER PROVISIONS.—To  
32      the extent that the requirements described in sections 30313, 30317, 30319,  
33      and 30321(b) of this title are not inconsistent with the requirements of this  
34      chapter, an officer, director, employee, agent, or other participant in the  
35      management or conduct of the affairs of a renewable fuel capital investment  
36      company shall be subject to the requirements of sections 30313, 30317,  
37      30319, and 30321(b) of this title.

38    **§ 30713. Removal or suspension of directors or officers**

39      Using the procedures for removing or suspending a director or an officer  
40      of a licensee under section 30320 of this title (to the extent that those pro-  
41      cedures are not inconsistent with the requirements of this chapter), the Ad-

1 administrator may remove or suspend a director or officer of a renewable fuel  
2 capital investment company.

3 **§ 30714. Termination**

4 The program shall terminate at the end of the second full fiscal year after  
5 the date on which the Administrator establishes the program.

6 **DIVISION C—SURETY BOND GUARANTEE**  
7 **PROGRAM**

8 **CHAPTER 321—SURETY BOND GUARANTEE PROGRAM**

Sec.

32101. Definitions.

32102. Surety bond guarantees and indemnification agreements.

32103. Surety bond guarantee fund.

9 **§ 32101. Definitions**

10 In this chapter:

11 (1) **BID BOND.**—The term “bid bond” means a bond conditioned on  
12 the bidder on a contract—

13 (A) entering into the contract, if the bidder receives the award  
14 of the contract; and

15 (B) furnishing the prescribed payment bond and performance  
16 bond.

17 (2) **BOND.**—Except in paragraphs (1), (7), and (8), the term “bond”  
18 means—

19 (A) a bid bond;

20 (B) a payment bond;

21 (C) a performance bond; and

22 (D) a bond that is ancillary to a bid bond, payment bond, or  
23 performance bond.

24 (3) **GUARANTEE.**—The term “guarantee” means a guarantee of a  
25 bond issued under section 32102(a) of this title.

26 (4) **INDEMNIFICATION AGREEMENT.**—The term “indemnification  
27 agreement” means an agreement entered into between the Adminis-  
28 trator and a participating surety under section 32102(b) of this title.

29 (5) **OBLIGEE.**—The term “obligee” means—

30 (A) in the case of a bid bond, the person requesting bids for  
31 the performance of a contract; or

32 (B) in the case of a payment bond or performance bond, the  
33 person that has contracted with a principal for the completion of  
34 the contract and to which the obligation of the surety runs in the  
35 event of a breach by the principal of a condition of a payment  
36 bond or performance bond.

37 (6) **PARTICIPATING SURETY.**—



1 (A) IN GENERAL.—The term “participating surety” means a  
2 surety to which a guarantee or commitment to guarantee is issued  
3 under section 32102(a)(1) of this title.

4 (B) INCLUSION.—The term “participating surety” includes a  
5 preferred surety.

6 (7) PAYMENT BOND.—The term “payment bond” means a bond con-  
7 ditioned on the payment by the principal of money to persons under  
8 contract with the principal.

9 (8) PERFORMANCE BOND.—The term “performance bond” means a  
10 bond conditioned on the completion by the principal of a contract in  
11 accordance with the terms of the contract.

12 (9) PREFERRED SURETY.—The term “preferred surety” means a  
13 participating surety that is a participant in the preferred surety bond  
14 guarantee program.

15 (10) PREFERRED SURETY BOND GUARANTEE PROGRAM.—The term  
16 “preferred surety bond guarantee program” means the program under  
17 section 32102(a)(4) of this title.

18 (11) PRIME CONTRACTOR.—The term “prime contractor” means the  
19 person with whom the obligee has contracted to perform the contract.

20 (12) PRINCIPAL.—

21 (A) IN GENERAL.—The term “principal” means—

22 (i) in the case of a bid bond, a person that bids for the  
23 award of a contract; or

24 (ii) the person—

25 (I) that is primarily liable to complete a contract for  
26 the obligee or to make a payment to another person in  
27 respect of the contract; and

28 (II) for whose performance of the person’s obligation  
29 the surety is bound under the terms of a payment bond  
30 or performance bond.

31 (B) PRIME CONTRACTOR OR SUBCONTRACTOR.—A principal  
32 may be a prime contractor or a subcontractor.

33 (13) PROGRAM.—The term “program” means the surety bond guar-  
34 antee program.

35 (14) SUBCONTRACTOR.—The term “subcontractor” means a person  
36 that contracts with a prime contractor or with another subcontractor  
37 to perform a contract.

38 (15) 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 **§ 32102. Surety bond guarantees and indemnification agree-**  
 12 **ments**

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 \$2,000,000.

21 (2) TERMS AND CONDITIONS.—The terms and conditions of guaran-  
 22 tees and commitments under paragraph (1) may vary from surety to  
 23 surety on the basis of the Administrator's experience with the par-  
 24 ticular surety.

25 (3) ELIGIBILITY.—A guarantee of a bond shall not be issued under  
 26 paragraph (1) unless—

27 (A) the person that would be principal under the bond is a small  
 28 business concern;

29 (B) the bond is required for the person to bid on a contract or  
 30 to serve as a prime contractor or subcontractor on a contract;

31 (C) the person is not able to obtain the bond on reasonable  
 32 terms and conditions without a guarantee under this section; and

33 (D)(i) there is a reasonable expectation that the principal will  
 34 perform the covenants and conditions of the contract with respect  
 35 to which the bond is required; and

36 (ii) the terms and conditions of the bond are reasonable in the  
 37 light of the risks involved and the extent of the surety's participa-  
 38 tion.

39 (4) PREFERRED SURETY BOND GUARANTEE PROGRAM.—

40 (A) IN GENERAL.—The Administrator may authorize a surety,  
 41 without further approval by the Administrator, to issue, monitor,

1 and service bonds that are subject to a guarantee under paragraph  
2 (1).

3 (B) ACTION BY THE ADMINISTRATOR.—The Administrator shall  
4 promptly act on an application from a surety to participate in the  
5 preferred surety bond guarantee program, in accordance with cri-  
6 teria and procedures established in regulations under subsection  
7 (d).

8 (C) REDUCTION OF ALLOTMENT; TERMINATION.—The Adminis-  
9 trator may reduce the allotment of bond guarantee authority or  
10 terminate the participation of a preferred surety based on the rate  
11 of participation of the preferred surety during the 4 most recent  
12 fiscal year quarters compared with the median rate of participa-  
13 tion by the other preferred sureties.

14 (b) INDEMNIFICATION OF PARTICIPATING SURETY AGAINST LOSS FROM  
15 AVOIDING BREACH.—

16 (1) IN GENERAL.—In connection with the issuance of a guarantee  
17 to a surety, the Administrator may enter into an indemnification agree-  
18 ment with a participating surety to indemnify the participating surety  
19 against a loss sustained by the participating surety in avoiding or at-  
20 tempting to avoid a breach of the terms of a bond guaranteed by the  
21 Administrator under subsection (a).

22 (2) DETERMINATION.—Before making any payment under this sub-  
23 section, the Administrator shall determine that a breach of the terms  
24 of the bond was imminent.

25 (3) APPROVAL.—A participating surety shall obtain approval from  
26 the Administrator before making any payments under this subsection  
27 unless the participating surety is a preferred surety.

28 (4) LIMITATION ON AMOUNT OF PAYMENT.—

29 (A) IN GENERAL.—Subject to subparagraph (B), no payment by  
30 the Administrator under this subsection shall exceed 10 percent of  
31 the contract price unless the Administrator determines that a  
32 greater payment should be made as a result of a finding by the  
33 Administrator that the participating surety's loss sustained in  
34 avoiding or attempting to avoid the breach was necessary and rea-  
35 sonable.

36 (B) MAXIMUM AMOUNT.—In no event shall the Administrator  
37 pay a participating surety under this subsection an amount ex-  
38 ceeding the guaranteed share of the bond available to the partici-  
39 pating surety under subsection (a).

1 (c) AMOUNT OF LIABILITY OF THE ADMINISTRATOR.—A guarantee or in-  
 2 demnification agreement shall obligate the Administrator to pay to the par-  
 3 ticipating surety—

4 (1) in the case of a preferred surety, an amount not to exceed 70  
 5 percent of the amount of the loss incurred and paid by the preferred  
 6 surety; or

7 (2) in the case of a participating surety other than a preferred sur-  
 8 ety—

9 (A) an amount not to exceed 90 percent of the amount of the  
 10 loss incurred and paid by the participating surety (but in no event  
 11 may the Administrator make a duplicate payment under sub-  
 12 section (b) or any other provision of this section); or

13 (B) the amount that is equal to 90 percent of the loss incurred  
 14 and paid by the participating surety, if—

15 (i) the total amount of the contract at the time of execution  
 16 of the bond or bonds is \$100,000 or less; or

17 (ii) the bond was issued to a small business concern owned  
 18 and controlled by socially and economically disadvantaged in-  
 19 dividuals or to a qualified HUBZone small business concern.

20 (d) REGULATIONS.—

21 (1) IN GENERAL.—The Administrator may prescribe regulations for  
 22 participating sureties.

23 (2) CONTENTS.—The regulations under paragraph (1) shall require  
 24 a participating surety to meet standards established by the Adminis-  
 25 trator for underwriting, claim practices, and loss ratios.

26 (e) REIMBURSEMENT OF SURETY.—

27 (1) IN GENERAL.—Except as provided in paragraph (2), the Admin-  
 28 istrator shall reimburse a participating surety as provided in a guar-  
 29 antee or indemnification agreement.

30 (2) NO LIABILITY.—The Administrator shall be relieved of all liabil-  
 31 ity under a guarantee or indemnification agreement if—

32 (A) the participating surety obtained the guarantee or indem-  
 33 nification agreement, or applied for reimbursement, by fraud or  
 34 material misrepresentation;

35 (B) the total contract amount at the time of execution of the  
 36 bond or bonds exceeds \$2,000,000;

37 (C) the participating surety has breached a material term or  
 38 condition of the guarantee or indemnification agreement; or

39 (D) the participating surety has substantially violated the regu-  
 40 lations prescribed under subsection (d).

1 (f) REIMBURSEMENT PROCEDURE.—The Administrator may, on such  
 2 terms and conditions as the Administrator may prescribe, establish a proce-  
 3 dure for reimbursing a participating surety for the paid losses of the partici-  
 4 pating surety billed each month, based on prior monthly payments to the  
 5 participating surety, with subsequent adjustments after such reimburse-  
 6 ment.

7 (g) REPORTING BY PARTICIPATING SURETIES; AUDITS.—

8 (1) REPORTING BY PARTICIPATING SURETIES.—A participating sur-  
 9 ety shall submit reports to the Administrator at such times and in such  
 10 form as the Administrator may require.

11 (2) AUDITS.—

12 (A) IN GENERAL.—The Administrator may at all reasonable  
 13 times audit, in the offices of a participating surety, all records rel-  
 14 evant to the Administration's guarantee, commitments to guar-  
 15 antee, and indemnification agreements issued to or entered into  
 16 with the participating surety under this section.

17 (B) PREFERRED SURETY BOND GUARANTEE PROGRAM PARTICI-  
 18 PANTS.—A preferred surety shall be audited at least once every  
 19 3 years by examiners selected and approved by the Administrator.

20 (h) ADMINISTRATIVE PROVISIONS.—The Administrator shall—

21 (1) administer the program on a prudent and economically justifiable  
 22 basis; and

23 (2) establish such fees for small business concerns and premiums for  
 24 participating sureties as the Administrator considers reasonable and  
 25 necessary, to be payable at such times and under such conditions as  
 26 the Administrator may determine.

27 **§ 32103. Surety bond guarantee fund**

28 (a) IN GENERAL.—There is created in the Treasury a separate fund for  
 29 guarantees, which shall be available to the Administrator without fiscal year  
 30 limitation as a revolving fund for the purposes of the program.

31 (b) DEPOSIT OF AMOUNTS RECEIVED BY THE ADMINISTRATOR.—All  
 32 amounts received by the Administrator (including any money, property, or  
 33 assets derived by the Administrator from operations in connection with the  
 34 program) shall be deposited in the fund.

35 (c) USE OF FUND.—All expenses and payments, excluding administrative  
 36 expenses, pursuant to operations of the Administrator under the program  
 37 shall be paid from the fund.

38 (d) APPROPRIATIONS.—Such sums as may be appropriated to the Fund  
 39 to carry out the programs authorized by this chapter shall be without fiscal  
 40 year limitation.

**DIVISION D—CERTIFIED DEVELOPMENT  
COMPANY PROGRAM  
CHAPTER 331—CERTIFIED DEVELOPMENT COMPANY  
PROGRAM**

Sec.

33101. Definitions.  
33102. Establishment of program.  
33103. Debenture guarantees.  
33104. Private debenture sales.  
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**§ 33101. Definitions**

In this chapter:

(1) ACCREDITED LENDER.—The term “accredited lender” means a qualified development company that is designated as an accredited lender under section 33107 of this title.

(2) CERTIFIED DEVELOPMENT COMPANY.—The term “certified development company” means a qualified development company that the Administrator certifies as meeting criteria established under this chapter to receive assistance under the program.

(3) COMMERCIAL LOAN.—The term “commercial loan” means a loan from a private source.

(4) DEVELOPMENT COMPANY.—The term “development company” means an enterprise that is incorporated under State law with the authority to promote and assist the growth and development of small business concerns in the area covered by the operations of the enterprise.

(5) GUARANTEED DEBENTURE.—The term “guaranteed debenture” means a debenture that is guaranteed by the Administrator under the program.

(6) PREMIER CERTIFIED LENDER.—The term “premier certified lender” means a certified development company that is designated as a premier certified lender under section 33108 of this title.

(7) PROGRAM.—The term “program” means the certified development company program.

(8) PROJECT.—The term “project” means a project described in section 33103(a)(1) of this title.

(9) QUALIFIED DEVELOPMENT COMPANY.—

(A) IN GENERAL.—The term “qualified development company” means a development company that, as determined by the Administrator, has—

- 1 (i) a full-time professional staff;  
 2 (ii) professional management ability (including adequate  
 3 accounting, legal, and business-servicing abilities); and  
 4 (iii) a board of directors, or membership, that meets on a  
 5 regular basis to make management decisions for the develop-  
 6 ment company, including decisions relating to the making and  
 7 servicing of loans by the development company.

8 (B) DEVELOPMENT COMPANIES IN A RURAL AREA.—A develop-  
 9 ment company in a rural area that does not satisfy the require-  
 10 ments of clauses (i) and (ii) of subparagraph (A) shall be deemed  
 11 to satisfy those requirements if the development company con-  
 12 tracts with a certified development company that does satisfy  
 13 those requirements and is located in the same general area to pro-  
 14 vide the services described in those clauses.

15 (10) SMALL MANUFACTURER.—The term “small manufacturer”  
 16 means a small business concern—

17 (A) the primary business of which is classified in sector 31, 32,  
 18 or 33 of the North American Industry Classification System; and

19 (B) all of the production facilities of which are located in the  
 20 United States.

21 **§ 33102. Establishment of program**

22 There is established within the Administration a certified development  
 23 company program for the purpose of fostering economic development and  
 24 creating and preserving job opportunities in both urban and rural areas by  
 25 providing long-term financing for small business concerns.

26 **§ 33103. Debenture guarantees**

27 (a) IN GENERAL.—

28 (1) AUTHORITY.—The Administrator may guarantee the timely pay-  
 29 ment of all principal and interest as scheduled on a debenture issued  
 30 by a certified development company the proceeds of which are used to  
 31 make a loan to a small business concern to be used for a project for  
 32 a sound business purpose, approved by the Administrator, of plant ac-  
 33 quisition, construction, conversion, or expansion (including land acqui-  
 34 sition).

35 (2) LIMITATION.—The Administrator shall not guarantee a deben-  
 36 ture for the purposes of making a loan described in paragraph (1) un-  
 37 less necessary funds for making the loan are not available to the cer-  
 38 tified development company from a private source on reasonable terms.

39 (3) TERMS AND CONDITIONS.—A debenture guarantee may be made  
 40 on such terms and conditions as the Administrator may by regulation  
 41 determine to be appropriate.

1 (4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full  
2 faith and credit of the United States is pledged to the payment of all  
3 amounts guaranteed under this subsection.

4 (5) SUBORDINATION.—A guaranteed debenture may be subordinated  
5 by the Administrator to any other debenture, promissory note, or other  
6 debt or obligation of the certified development company that issues the  
7 debenture.

8 (b) ELIGIBILITY FOR ASSISTANCE.—

9 (1) ECONOMIC DEVELOPMENT OBJECTIVES.—

10 (A) DEFINITIONS.—In subclauses (IX) and (X) of subpara-  
11 graph (B)(iii), terms have the meanings given the terms under the  
12 Leadership in Energy and Environmental Design standard for  
13 green building certification, as determined by the Administrator.

14 (B) ELIGIBILITY.—To be eligible for assistance under the pro-  
15 gram, a certified development company shall demonstrate that the  
16 project to be funded with the proceeds of a guaranteed debenture  
17 is directed toward at least one of the following economic develop-  
18 ment objectives:

19 (i) JOB CREATION OR RETENTION OBJECTIVE.—The cre-  
20 ation of job opportunities within 2 years after completion of  
21 the project, or the retention of jobs attributable to the  
22 project, as provided in paragraph (3).

23 (ii) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE.—  
24 Improvement of the economy of the local community, such as  
25 stimulating other business development in the community,  
26 bringing new income into the area, or assisting the commu-  
27 nity in diversifying and stabilizing its economy.

28 (iii) PUBLIC POLICY OBJECTIVE.—The achievement of one  
29 or more of the following public policy objectives:

30 (I) Business district revitalization.

31 (II) Expansion of exports.

32 (III) Expansion of minority business development or  
33 women-owned business development.

34 (IV) Rural development.

35 (V) Expansion of small business concerns owned and  
36 controlled by veterans, especially small business concerns  
37 owned and controlled by service-disabled veterans.

38 (VI) Enhancement of economic competition, including  
39 the advancement of technology, plan retooling, conver-  
40 sion to robotics, and competition with imports.



1 (VII) Changes necessitated by Federal budget cut-  
2 backs, including cutbacks in defense-related industries.

3 (VIII) Business restructuring arising from Federally  
4 mandated standards or policies affecting the environment  
5 or the safety and health of employees.

6 (IX) Reduction of energy consumption by at least 10  
7 percent.

8 (X) Increased use of sustainable design, including—

9 (aa) designs that reduce the use of greenhouse  
10 gas emitting fossil fuels; and

11 (bb) low-impact designs to produce buildings that  
12 reduce the use of nonrenewable resources and mini-  
13 mize environmental impact.

14 (XI) Plant, equipment, and process upgrades of re-  
15 newable energy sources such as—

16 (aa) the small-scale production of energy for indi-  
17 vidual buildings or communities consumption, com-  
18 monly known as micropower; and

19 (bb) renewable fuels producers, including biodiesel  
20 and ethanol producers.

21 (2) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE; PUBLIC POL-  
22 ICY OBJECTIVE.—If eligibility is based on the criteria stated in clause  
23 (ii) or (iii) of paragraph (1)(B), the project need not meet the job cre-  
24 ation or job preservation criteria developed by the Administrator if the  
25 overall portfolio of the development company meets or exceeds those job  
26 creation or retention criteria.

27 (3) JOB CREATION OR RETENTION OBJECTIVE.—

28 (A) PROJECT STANDARD.—A project meets the job creation or  
29 retention objective under paragraph (1)(B)(i) if the project cre-  
30 ates or retains—

31 (i) one job for every \$50,000 guaranteed by the Adminis-  
32 trator; or

33 (ii) in the case of a project of a small manufacturer, one  
34 job for every \$100,000 guaranteed by the Administrator.

35 (B) PORTFOLIO STANDARD.—A project need not meet the  
36 project standard under subparagraph (A) if—

37 (i) eligibility of the project is based on the community eco-  
38 nomic improvement objective under paragraph (1)(B)(ii) or  
39 one or more of the public policy objectives under paragraph  
40 (1)(B)(iii); and

1 (ii) after the loan is made for the project, the certified de-  
 2 velopment company's portfolio of outstanding guaranteed de-  
 3 bentures, excluding guaranteed debentures for loans to small  
 4 manufacturers, creates or retains—

5 (I) one job for every \$50,000 guaranteed by the Ad-  
 6 ministrator; or

7 (II) in the case of a project in Alaska, Hawaii, a  
 8 State-designated enterprise zone, an empowerment zone,  
 9 an enterprise community, or labor surplus area, as deter-  
 10 mined by the Secretary of Labor, or in any other area  
 11 designated by the Administrator, one job for every  
 12 \$75,000 guaranteed by the Administrator.

13 (4) WAIVER OF REQUIREMENTS.—

14 (A) IN GENERAL.—Under regulations prescribed by the Admin-  
 15 istrator, the Administrator may waive, on a case-by-case basis or  
 16 by regulation, any requirement of paragraph (3) (other than the  
 17 requirement that a calculation under paragraph (3)(B)(ii)(II) ex-  
 18 clude debentures for loans to small manufacturers).

19 (B) DOLLAR AMOUNTS.—The Administrator may not, in con-  
 20 nection with any waiver under subparagraph (A), adopt any dollar  
 21 amount that is lower than a dollar amount specified in paragraph  
 22 (3).

23 (e) CRITERIA FOR ASSISTANCE.—

24 (1) IN GENERAL.—A certified development company shall meet cri-  
 25 teria established by the Administrator, including such an extent of par-  
 26 ticipation to be required or amount of paid-in capital to be used in each  
 27 instance as the Administrator determines to be reasonable.

28 (2) SMALL BUSINESS CONCERN FUNDS.—In the case of any project  
 29 of a small business concern financed under the program, the small  
 30 business concern (or its owners, stockholders, or affiliates) receiving as-  
 31 sistance through a body authorized by this chapter shall provide—

32 (A) at least 15 percent of the total financed cost of the project  
 33 if the small business concern has been in operation for a period  
 34 of 2 years or less or if the project involves the construction of a  
 35 limited-purpose or single-purpose building or other structure;

36 (B) at least 20 percent of the total financed cost of the project  
 37 if the project involves both of the conditions described in subpara-  
 38 graph (A); or

39 (C) an amount specified by the certified development company,  
 40 which shall be at least 10 percent of the total financed cost of the

1 project, if the project involves neither of the conditions described  
2 in subparagraph (A).

3 (3) THIRD-PARTY FUNDS.—

4 (A) THIRD-PARTY SOURCES.—Third-party funds for a project of  
5 a small business concern financed under the program may be de-  
6 rived, in whole or in part, from—

- 7 (i) a State or local government;  
8 (ii) a bank or other financial institution;  
9 (iii) a foundation or other nonprofit institution; or  
10 (iv) the small business concern (or its owners, stockholders,  
11 or affiliates).

12 (B) THIRD-PARTY FUNDING REQUIREMENT.—Not less than 50  
13 percent of the total financed cost of a project described in sub-  
14 paragraph (A) of (B) of paragraph (2) shall come from one or  
15 more third-party sources described in clauses (i), (ii), and (iii) of  
16 subparagraph (A).

17 (C) SELLER FINANCING.—Financing provided by a seller of  
18 property to a small business concern for a project may be used  
19 to meet the requirements of this paragraph if the seller subordi-  
20 nates the interest of the seller in the property to the debenture  
21 guaranteed by the Administrator.

22 (4) COLLATERAL.—

23 (A) IN GENERAL.—The collateral provided by a small business  
24 concern—

- 25 (i) shall generally include a subordinate lien position on the  
26 property being financed under the program; and  
27 (ii) is only one of the factors to be evaluated in the credit  
28 determination.

29 (B) ADDITIONAL COLLATERAL.—Additional collateral shall be  
30 required only if the Administrator determines, on a case-by-case  
31 basis, that additional security is necessary to protect the interest  
32 of the Government.

33 (C) APPRAISALS.—With respect to commercial real property  
34 provided by a small business concern as collateral, an appraisal of  
35 the property by a State-licensed or State-certified appraiser—

- 36 (i) shall be required by the Administrator before disburse-  
37 ment of the loan if the estimated value of the property is  
38 more than \$250,000; and  
39 (ii) may be required by the Administrator or the certified  
40 development company before disbursement of the loan, if—

1 (I) the estimated value of the property is \$250,000 or  
2 less; and

3 (II) an appraisal is necessary for appropriate evalua-  
4 tion of creditworthiness.

5 (5) LEASING.—

6 (A) IN GENERAL.—In the case of a project to construct a new  
7 facility for a small business concern, up to 33 percent of the total  
8 project may be leased, if reasonable projections of growth dem-  
9 onstrate that the small business concern—

10 (i) will need additional space within 3 years after the date  
11 of completion of the facility; and

12 (ii) will fully utilize the additional space within 10 years  
13 after the date of completion of the facility.

14 (B) LIMITATION ON LEASING.—In addition to any portion of a  
15 project of a small business concern permitted to be leased under  
16 subparagraph (A), not to exceed 20 percent of the project may be  
17 leased by the small business concern to one or more other tenants  
18 if the small business occupies permanently and uses not less than  
19 a total of 60 percent of the space in the project after the execution  
20 of any leases authorized under this section.

21 (6) OWNERSHIP REQUIREMENTS.—

22 (A) OWNERSHIP BY SPOUSE UNDER COMMUNITY PROPERTY  
23 LAW.—Ownership requirements to determine the eligibility of a  
24 small business concern that applies for assistance under the pro-  
25 gram shall be determined without regard to any ownership interest  
26 of a spouse arising solely from the application of the community  
27 property law of a State for purposes of determining marital inter-  
28 ests.

29 (B) OWNERSHIP BY RELATIVES.—

30 (i) IN GENERAL.—The Administrator shall not decline to  
31 issue a debenture guarantee for a project of a small business  
32 concern on the ground that the ownership interests of the  
33 small business concern and the ownership interests of the  
34 property to be financed with the proceeds of a loan made with  
35 the proceeds of the guaranteed debenture are not identical be-  
36 cause one or more of the classes of relatives described in  
37 clause (ii) have an ownership interest in the small business  
38 concern or the property if the Administrator determines, on  
39 a case-by-case basis, that the ownership interest, the guar-  
40 antee, and the proceeds of the loan will substantially benefit  
41 the small business concern.

1 (ii) CLASSES OF RELATIVES.—The classes of relatives re-  
2 ferred to in clause (i) are father, mother, son, daughter, wife,  
3 husband, brother, or sister.

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 30304(b) of this title.

12 (e) LOAN APPROVAL, AMOUNT, AND INTEREST RATE.—

13 (1) APPROVAL BY THE ADMINISTRATOR.—The Administrator shall  
14 approve each loan made with the proceeds of a guaranteed debenture.

15 (2) MAXIMUM LOAN AMOUNT.—

16 (A) PERCENTAGE OF PROJECT COST.—The amount of a loan  
17 made with the proceeds of a guaranteed debenture shall not exceed  
18 the amount that is equal to 50 percent of the cost of the project  
19 with respect to which the loan is made.

20 (B) DOLLAR AMOUNT.—

21 (i) IN GENERAL.—Except as provided in clause (ii), the  
22 amount of a loan made with the proceeds of a guaranteed de-  
23 benture shall not exceed \$1,500,000.

24 (ii) EXCEPTIONS.—

25 (I) PUBLIC POLICY OBJECTIVES.—The amount of a  
26 loan for a project directed toward one or more of the  
27 public policy objectives described in subsection  
28 (b)(1)(B)(iii) shall not exceed \$2,000,000.

29 (II) SMALL MANUFACTURERS.—The amount of a loan  
30 to a small manufacturer shall not exceed \$4,000,000.

31 (III) REDUCTION OF ENERGY CONSUMPTION.—The  
32 amount of a loan for a project that reduces the bor-  
33 rower's energy consumption by at least 10 percent shall  
34 not exceed \$4,000,000.

35 (IV) GENERATION OF RENEWABLE ENERGY OR RE-  
36 NEWABLE FUEL.—The amount of a loan for a project  
37 that generates renewable energy or renewable fuel (such  
38 as biodiesel or ethanol production) shall not exceed  
39 \$4,000,000.

40 (f) COMMERCIAL LOAN INTEREST RATE.—

1 (1) PURPOSE.—The purpose of this subsection is to facilitate the or-  
 2 derly and necessary flow of long-term loans from certified development  
 3 companies to small business concerns.

4 (2) MAXIMUM INTEREST RATE.—Notwithstanding the provisions of  
 5 the constitution or laws of any State limiting the rate or amount of  
 6 interest that may be charged, taken, received, or reserved, the max-  
 7 imum legal rate of interest on any commercial loan that funds any por-  
 8 tion of the cost of the project financed under the program that is not  
 9 funded by a guaranteed debenture shall be a rate established by the  
 10 Administrator under paragraph (3).

11 (3) ESTABLISHMENT BY THE ADMINISTRATOR.—The Administrator  
 12 shall establish and publish quarterly a maximum legal interest rate for  
 13 any commercial loan that funds any portion of the cost of a project  
 14 financed under the program that is not funded by a guaranteed deben-  
 15 ture.

16 (g) FEES AND CHARGES.—

17 (1) LOAN FEES.—

18 (A) IN GENERAL.—With respect to each loan made with the  
 19 proceeds of a guaranteed debenture, the Administrator shall assess  
 20 and collect a fee, which shall be payable by the borrowing small  
 21 business concern, in an amount established annually by the Ad-  
 22 ministrator.

23 (B) AMOUNT.—

24 (i) IN GENERAL.—Except as provided in clause (ii), the  
 25 amount of a loan fee shall not exceed the lesser of—

26 (I) 0.9375 percent per year of the outstanding balance  
 27 of the loan; or

28 (II) the minimum amount necessary to reduce to zero  
 29 the cost (as defined in section 502 of the Federal Credit  
 30 Reform Act of 1990 (2 U.S.C. 661a)) to the Adminis-  
 31 trator of purchasing and guaranteeing debentures under  
 32 the program.

33 (ii) EXCEPTION.—

34 (I) IN GENERAL.—In the case of a loan made during  
 35 the 2-year period beginning on October 1, 2002, the  
 36 amount of a loan fee shall be 50 percent of the amount  
 37 established under clause (i), for the life of the loan.

38 (II) LIMITATION.—Subclause (I) shall be effective only  
 39 to the extent that funds are made available under appro-  
 40 priations Acts, which funds shall be used by the Admin-  
 41 istrator to offset the cost (as defined in section 502 of

1 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))  
2 of that subclause.

3 (C) USE OF PROCEEDS.—The Administrator shall use the pro-  
4 ceeds of loan fees collected to offset the cost (as defined in section  
5 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))  
6 to the Administrator of making guarantees under the program.

7 (2) ADMINISTRATIVE EXPENSE CHARGES.—The Administrator may  
8 impose a charge for administrative expenses with respect to a guaran-  
9 teed debenture.

10 (3) PARTICIPATION FEES.—

11 (A) IN GENERAL.—The Administrator shall collect a one-time  
12 fee in an amount equal to 50 basis points on the total participa-  
13 tion in a project by an entity described in clause (i), (ii), or (iii)  
14 of subsection (c)(3)(A) if the participation will occupy a senior  
15 credit position to that of the certified development company.

16 (B) USE OF PROCEEDS.—All proceeds of the participation fee  
17 shall be used to offset the cost (as defined in section 502 of the  
18 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Ad-  
19 ministrator of making guarantees under the program.

20 (4) CERTIFIED DEVELOPMENT COMPANY FEES.—

21 (A) IN GENERAL.—The Administrator shall collect annually  
22 from a certified development company a fee of 0.125 percent of  
23 the outstanding principal balance of any guaranteed debenture ap-  
24 proved by the Administrator on or after October 1, 1996.

25 (B) DERIVATION.—The fee under subparagraph (A) shall be de-  
26 rived from the servicing fees collected by the certified development  
27 company pursuant to regulation and not from any additional fee  
28 imposed on a small business concern.

29 (C) USE OF PROCEEDS.—All proceeds of the certified develop-  
30 ment company fee shall be used to offset the cost (as defined in  
31 section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C.  
32 661a)) to the Administrator of making guarantees under the pro-  
33 gram.

34 (5) APPLICABILITY.—The fees authorized by this subsection apply to  
35 financings approved by the Administrator on or after October 1, 1996.

36 (h) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-  
37 ceived and retained by the Administrator under the program shall be in-  
38 cluded in the calculations made by the Director of the Office of Manage-  
39 ment and Budget to offset the cost (as defined in section 502 of the Federal  
40 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-  
41 chasing and guaranteeing debentures under the program.

## (i) REQUIRED ACTIONS ON DEFAULT.—

(1) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a guaranteed debenture is due and not received, the Administrator shall—

(A) take all necessary steps to bring the loan current; or

(B) implement a formal written deferral agreement.

(2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the Administrator shall take all necessary steps to purchase or accelerate the guaranteed debenture.

(3) PREPAYMENT PENALTIES.—With respect to the portion of a project derived from funds described in subsection (c)(3), the Administration—

(A) shall negotiate the elimination of any prepayment penalties or late fees on a defaulted loan made before September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default-based purchase of a loan issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

**§ 33104. Private debenture sales**

(a) IN GENERAL.—Notwithstanding any other law (including a regulation), all guaranteed debentures shall be sold to investors, publicly or by private placement.

(b) FEDERAL FINANCING BANK.—Nothing in any provision of law authorizes the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under the program that is being sold under subsection (a);

(2) any obligation that is an interest in an obligation described in paragraph (1); or

(3) any obligation that is secured by, or substantially all of the value of which is attributable to, an obligation described in paragraph (1) or (2).

**§ 33105. Pooling of debentures**

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of a guaranteed debenture.



1           (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)  
2 shall be based on and backed by a trust or pool approved by the Ad-  
3 ministrator and composed solely of guaranteed debentures.

4 (b) GUARANTEE.—

5           (1) IN GENERAL.—The Administrator may, on such terms and con-  
6 ditions as the Administrator considers appropriate, guarantee the time-  
7 ly payment of the principal of and interest on trust certificates issued  
8 by the Administrator (or an agent of the Administrator) for purposes  
9 of this section.

10          (2) LIMITATION.—A guarantee shall be limited to the extent of prin-  
11 cipal and interest on the guaranteed debentures that compose the trust  
12 or pool.

13          (3) PREPAYMENT ON REDEMPTION.—

14           (A) REDUCTION OF GUARANTEE.—If a guaranteed debenture in  
15 a trust or pool is prepaid, voluntarily or in the event of default,  
16 the guarantee of timely payment of principal and interest on the  
17 trust certificates shall be reduced in proportion to the amount of  
18 principal and interest that the prepaid guaranteed debenture rep-  
19 resents in the trust or pool.

20           (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a  
21 prepaid or defaulted guaranteed debenture shall accrue and be  
22 guaranteed by the Administrator only through the date of pay-  
23 ment on the guarantee.

24           (C) CALL OF TRUST CERTIFICATE.—During the term of a trust  
25 certificate, the trust certificate may be called for redemption due  
26 to prepayment or default of all guaranteed debentures constituting  
27 the trust or pool.

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

33          (d) FEES.—

34           (1) ADMINISTRATOR.—The Administrator shall not collect any fee  
35 for a guarantee under this section.

36           (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-  
37 clude an agent of the Administrator from collecting a fee approved by  
38 the Administrator for performing the functions described in subsection  
39 (f)(2).

40          (e) SUBROGATION RIGHTS; OWNERSHIP RIGHTS IN GUARANTEED DE-  
41 BENTURES.—

1 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
 2 antee issued under this section, the Administrator shall be subrogated  
 3 fully to the rights satisfied by the payment.

4 (2) OWNERSHIP RIGHTS IN GUARANTEED DEBENTURES.—No Fed-  
 5 eral, State, or local law shall preclude or limit the exercise by the Ad-  
 6 ministrator of the Administrator's ownership rights in the guaranteed  
 7 debentures constituting the trust or pool against which the trust certifi-  
 8 cates are issued.

9 (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEAL-  
 10 ERS.—

11 (1) CENTRAL REGISTRATION.—The Administrator shall provide for  
 12 a central registration of all trust certificates sold pursuant to this sec-  
 13 tion.

14 (2) AGENT.—

15 (A) IN GENERAL.—The Administrator shall contract with an  
 16 agent to carry out on behalf of the Administrator—

17 (i) the central registration functions under this section; and

18 (ii) the issuance of trust certificates to facilitate poolings.

19 (B) BOND OR INSURANCE.—The agent under subparagraph (A)  
 20 shall provide a fidelity bond or insurance in such amounts as the  
 21 Administrator determines to be necessary to fully protect the in-  
 22 terests of the Government.

23 (3) DISCLOSURE.—The Administrator shall require a seller to dis-  
 24 close to a purchaser of a trust certificate issued under this section, be-  
 25 fore the sale, information on the terms, conditions, and yield of the  
 26 trust certificate.

27 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator  
 28 may regulate brokers and dealers in trust certificates sold under this  
 29 section.

30 (5) FORM OF REGISTRATION.—This subsection does not preclude the  
 31 use of a book-entry or other electronic form of registration for trust  
 32 certificates.

33 **§ 33106. Prohibition of acceptance of funding with certain**  
 34 **conditions, priorities, restrictions, or requirements**

35 Notwithstanding any other provision of law, a certified development com-  
 36 pany shall not accept funding from any source (including a Federal agency)  
 37 if the funding—

38 (1) includes any condition, priority, or restriction on the type of  
 39 small business concern to which the certified development company  
 40 may provide financial assistance under the program; or

1 (2) includes any condition or imposes any requirement, directly or  
2 indirectly, on any recipient of assistance under the program.

3 **§ 33107. Accredited lenders program**

4 (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as  
5 part of the program an accredited development company program for quali-  
6 fied development companies that meet the requirements of subsection (b).

7 (b) REQUIREMENTS.—The Administrator may designate a qualified devel-  
8 opment company as an accredited lender if the qualified development com-  
9 pany—

10 (1) has been an active participant in the program for not less than  
11 the preceding 12 months;

12 (2) has well-trained, qualified personnel who are knowledgeable in  
13 the Administration's lending policies and procedures for the program;

14 (3) has the ability to process, close, and service financing for plant  
15 and equipment under the program;

16 (4) has a loss rate on the qualified development company's deben-  
17 tures that is reasonable and acceptable to the Administrator;

18 (5) has a history of submitting to the Administrator complete and  
19 accurate debenture guarantee application packages; and

20 (6) has demonstrated the ability to serve small business credit needs  
21 for financing plant and equipment through the program.

22 (c) EXPEDITED PROCESSING OF LOAN APPLICATIONS.—The Adminis-  
23 trator shall develop an expedited procedure for processing a loan application  
24 or servicing action submitted by an accredited lender.

25 (d) SUSPENSION OR REVOCATION OF DESIGNATION.—

26 (1) IN GENERAL.—The Administrator may suspend or revoke the  
27 designation of a qualified development company as an accredited lender  
28 if the Administrator determines that—

29 (A) the qualified development company has not continued to  
30 meet the criteria for eligibility under subsection (b); or

31 (B) the qualified development company has failed to adhere to  
32 the Administrator's regulations or is violating any other applicable  
33 provision of law.

34 (2) EFFECT.—A suspension or revocation under paragraph (1) shall  
35 not affect any outstanding debenture guarantee.

36 **§ 33108. Premier certified lenders program**

37 (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as  
38 part of the program a premier certified lenders program for certified devel-  
39 opment companies that meet the requirements of subsection (b).

40 (b) REQUIREMENTS.—

1           (1) APPLICATION.—To be eligible to participate in the premier cer-  
2           tified lenders program, a certified development company shall submit  
3           to the Administrator an application at such time, in such manner, and  
4           containing such information as the Administrator may require.

5           (2) DESIGNATION.—The Administrator may designate a certified de-  
6           velopment company as a premier certified lender if—

7                   (A) the certified development company is an active certified de-  
8                   velopment company in good standing;

9                   (B) the certified development company has been an active par-  
10                  ticipant in the accredited lenders program during the entire 12-  
11                  month period preceding the date on which the certified develop-  
12                  ment company submits an application under paragraph (1);

13                  (C) the certified development company has a history of—

14                          (i) submitting to the Administrator adequately analyzed de-  
15                          benture guarantee application packages; and

16                          (ii) properly closing loans under the program and servicing  
17                          its loan portfolio;

18                  (D) the certified development company agrees to assume and to  
19                  reimburse the Administrator—

20                          (i) for 10 percent of any loss sustained by the Adminis-  
21                          trator as a result of default by the certified development com-  
22                          pany in the payment of principal or interest on a guaranteed  
23                          debenture issued by the certified development company; or

24                          (ii) for 15 percent of the loss, if the loss is attributable to  
25                          a guaranteed debenture issued by the certified development  
26                          company during any period for which an election is in effect  
27                          under subsection (c)(8) for the certified development com-  
28                          pany; and

29                  (E) the Administrator determines, with respect to the certified  
30                  development company, that the loss reserve established under sub-  
31                  section (c) is sufficient for the certified development company to  
32                  meet its obligations to protect the Federal Government from risk  
33                  of loss.

34           (3) WAIVER OF REQUIREMENT.—The Administrator may waive the  
35           requirement of paragraph (2)(B) with respect to a certified develop-  
36           ment company if the certified development company is qualified to par-  
37           ticipate in the accredited lenders program.

38           (4) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Admin-  
39           istrator may revoke the designation of a certified development company  
40           as a premier certified lender under this section at any time, if the Ad-  
41           ministrator determines that the certified development company does not

1 meet any requirement described in subparagraphs (A) to (E) of para-  
2 graph (2).

3 (c) LOSS RESERVE.—

4 (1) IN GENERAL.—A premier certified lender shall establish a loss  
5 reserve for financing approved under this section.

6 (2) AMOUNT.—The amount of a loss reserve under paragraph (1)  
7 shall be 10 percent of the amount of the premier certified lender's ex-  
8 posure, as determined under subsection (b)(2)(D).

9 (3) ASSETS.—A loss reserve under paragraph (1) shall be comprised  
10 of—

11 (A) segregated funds on deposit in one or more accounts with  
12 one or more federally insured depository institutions selected by  
13 the premier certified lender, subject to a collateral assignment in  
14 favor of, and in a format acceptable to, the Administrator;

15 (B) one or more irrevocable letters of credit, with a collateral  
16 assignment in favor of, and a commercially reasonable format ac-  
17 ceptable to, the Administrator; or

18 (C) any combination of the assets described in subparagraphs  
19 (A) and (B).

20 (4) CONTRIBUTIONS.—A premier certified lender shall make con-  
21 tributions to a loss reserve under paragraph (1) in the following  
22 amounts and at the following intervals:

23 (A) 50 percent when a debenture is closed.

24 (B) 25 percent additional not later than one year after a deben-  
25 ture is closed.

26 (C) 25 percent additional not later than 2 years after a deben-  
27 ture is closed.

28 (5) REIMBURSEMENT OF THE ADMINISTRATOR FOR LOSS.—If a loss  
29 is sustained by the Administrator, any portion of the loss reserve, and  
30 other funds provided by the premier certified lender as necessary, may  
31 be used to reimburse the Administrator for the premier certified lend-  
32 er's share of the loss as provided in subsection (b)(2)(D) of this sec-  
33 tion.

34 (6) REPLACEMENT OF USED FUNDS.—If a premier certified lender  
35 uses funds in its loss reserve, the premier certified lender shall replace  
36 an equivalent amount of funds in the loss reserve not later than 30  
37 days after the date of the use.

38 (7) WITHDRAWALS.—

39 (A) IN GENERAL.—The Administrator shall allow a premier cer-  
40 tified lender to withdraw from its loss reserve amounts attrib-  
41 utable to any debenture that is repaid.

1 (B) TEMPORARY REDUCTION BASED ON OUTSTANDING BAL-  
2 ANCE.—

3 (i) IN GENERAL.—Notwithstanding subparagraph (A), dur-  
4 ing the 2-year period beginning on August 26, 2004, the Ad-  
5 ministrator shall allow a premier certified lender to withdraw  
6 from its loss reserve such amounts as are in excess of one  
7 percent of the aggregate outstanding balances of debentures  
8 to which the loss reserve relates.

9 (ii) APPLICABILITY.—Clause (i) does not apply with respect  
10 to a debenture before 100 percent of the contribution de-  
11 scribed in paragraph (4) with respect to the debenture is  
12 made.

13 (8) ALTERNATIVE LOSS RESERVE.—

14 (A) DEFINITIONS.—In this paragraph:

15 (i) CALENDAR QUARTER.—The term “calendar quarter”  
16 means—

17 (I) the period that begins on January 1 and ends on  
18 March 31 of a year;

19 (II) the period that begins on April 1 and ends on  
20 June 30 of a year;

21 (III) the period that begins on July 1 and ends on  
22 September 30 of a year; and

23 (IV) the period that begins on October 1 and ends on  
24 December 31 of a year.

25 (ii) ELIGIBLE CALENDAR QUARTER.—The term “eligible  
26 calendar quarter” means—

27 (I) the first calendar quarter that begins after August  
28 26, 2004; and

29 (II) each of the 7 succeeding calendar quarters.

30 (iii) PCLP LOAN.—The term “PCLP loan” means a loan  
31 guaranteed under this section.

32 (iv) QUALIFIED HIGH LOSS RESERVE PCL.—The term  
33 “qualified high loss reserve PCL” means, with respect to any  
34 calendar year, a premier certified lender that the Adminis-  
35 trator designates as a qualified high loss reserve PCL for that  
36 year under subparagraph (B).

37 (v) QUALIFIED INDEPENDENT AUDITOR.—The term “quali-  
38 fied independent auditor”, with respect to any year, means an  
39 auditor that—

40 (I) is compensated by a qualified high loss reserve  
41 PCL;

1 (II) is independent of the qualified high loss reserve  
2 PCL; and

3 (III) was approved by the Administrator during the  
4 preceding year.

5 (vi) SPECIFIED RISK MANAGEMENT BENCHMARK.—The  
6 term “specified risk management benchmark” means the fol-  
7 lowing rates, as determined by the Administrator:

8 (I) Currency rate.

9 (II) Delinquency rate.

10 (III) Default rate.

11 (IV) Liquidation rate.

12 (V) Loss rate.

13 (B) DESIGNATION OF QUALIFIED HIGH LOSS RESERVE PCLs.—  
14 The Administrator may designate a premier certified lender as a  
15 qualified high loss reserve PCL if the Administrator determines  
16 that—

17 (i) the amount of the loss reserve of the premier certified  
18 lender is not less than \$100,000;

19 (ii) the premier certified lender has established and is using  
20 an appropriate and effective process for analyzing the risk of  
21 loss associated with its portfolio of PCLP loans and for grad-  
22 ing each PCLP loan made by the premier certified lender on  
23 the basis of the risk of loss associated with the loan; and

24 (iii)(I) the premier certified lender meets or exceeds 4 or  
25 more of the specified risk management benchmarks as of the  
26 most recent assessment by the Administrator; or

27 (II) the Administrator issues a waiver with respect to the  
28 requirement of subclause (I).

29 (C) ELECTION.—With respect to any eligible calendar quarter,  
30 a qualified high loss reserve PCL may elect to have the require-  
31 ments of this paragraph apply in lieu of the requirements of para-  
32 graphs (2) and (4) for that eligible calendar quarter.

33 (D) CONTRIBUTIONS.—

34 (i) ORDINARY RULES INAPPLICABLE.—Except as provided  
35 under clause (ii) and paragraph (6), a qualified high loss re-  
36 serve PCL that makes the election described in subparagraph  
37 (C) with respect to an eligible calendar quarter shall not be  
38 required to make contributions to its loss reserve during that  
39 eligible calendar quarter.

40 (ii) CONTRIBUTION BASED ON LOSS.—A qualified high loss  
41 reserve PCL that makes the election described in subpara-

1 graph (C) with respect to an eligible calendar quarter shall,  
 2 before the last day of that eligible calendar quarter, make  
 3 such contributions to its loss reserve as are necessary to en-  
 4 sure that the amount of the loss reserve of the qualified high  
 5 loss reserve PCL is—

6 (I) not less than \$100,000; and

7 (II) sufficient, as determined by a qualified inde-  
 8 pendent auditor, for the qualified high loss reserve PCL  
 9 to meet its obligations to protect the Federal Govern-  
 10 ment from risk of loss.

11 (iii) CERTIFICATION.—Before the end of any eligible cal-  
 12 endar quarter for which an election is in effect under sub-  
 13 paragraph (C), the head of the qualified high loss reserve  
 14 PCL shall submit to the Administrator a certification that  
 15 the loss reserve of the qualified high loss reserve PCL is suffi-  
 16 cient to meet the qualified high loss reserve PCL's obligation  
 17 to protect the Federal Government from risk of loss. The cer-  
 18 tification shall be in such form and submitted in such manner  
 19 as the Administrator may require and shall be signed by the  
 20 head of the qualified high loss reserve PCL and the auditor  
 21 making the determination under clause (ii)(II).

22 (E) WITHDRAWALS.—

23 (i) ORDINARY RULE INAPPLICABLE.—Paragraph (7) shall  
 24 not apply with respect to any qualified high loss reserve PCL  
 25 for any calendar quarter for which an election is in effect  
 26 under subparagraph (C).

27 (ii) EXCESS FUNDS.—At the end of each calendar quarter  
 28 for which an election is in effect under subparagraph (C), the  
 29 Administrator shall allow the qualified high loss reserve PCL  
 30 to withdraw from its loss reserve the excess of the amount of  
 31 the loss reserve over the greater of—

32 (I) \$100,000; or

33 (II) the amount that is determined under subpara-  
 34 graph (D)(ii)(II) to be sufficient to meet the PCL's obli-  
 35 gation to protect the Federal Government from risk of  
 36 loss.

37 (F) RECONTRIBUTION.—

38 (i) IN GENERAL.—If the requirements of this paragraph  
 39 apply to a qualified high loss reserve PCL for any eligible cal-  
 40 endar quarter and cease to apply to that qualified high loss  
 41 reserve PCL for any subsequent eligible calendar quarter, the



1 qualified high loss reserve PCL shall make a contribution to  
 2 its loss reserve in such amount as the Administrator may de-  
 3 termine, subject to clause (ii).

4 (ii) AMOUNT.—The amount determined under clause (i)  
 5 shall not exceed the amount that would result in the total  
 6 amount in the loss reserve being equal to the amount that  
 7 would have been in the loss reserve had this paragraph never  
 8 applied to the qualified high loss reserve PCL.

9 (iii) FORM.—The Administrator may require that a con-  
 10 tribution under clause (i) be made as a single payment or as  
 11 a series of payments.

12 (G) RISK MANAGEMENT.—

13 (i) IN GENERAL.—If a qualified high loss reserve PCL fails  
 14 to meet the requirement of subparagraph (B)(iii) during any  
 15 period for which an election is in effect under subparagraph  
 16 (C) and the failure continues for 180 days—

17 (I) the requirements of paragraphs (2), (4), and (7)  
 18 shall apply to the qualified high loss reserve PCL as of  
 19 the end of that 180-day period; and

20 (II) the qualified high loss reserve PCL shall make the  
 21 contribution to its loss reserve described in subparagraph  
 22 (F).

23 (ii) WAIVER.—The Administrator may waive the require-  
 24 ments of clause (i).

25 (H) REGULATIONS.—

26 (i) IN GENERAL.—The Administrator shall prescribe regu-  
 27 lations to carry out this paragraph.

28 (ii) CONTENTS.—The regulations shall include provisions  
 29 relating to—

30 (I) the approval of auditors under subparagraph  
 31 (A)(v); and

32 (II) the designation of qualified high loss reserve  
 33 PCLs under subparagraph (B), including the determina-  
 34 tion of whether a process for analyzing risk of loss is ap-  
 35 propriate and effective for purposes of subparagraph  
 36 (B)(ii).

37 (d) SALE OF CERTAIN DEFAULTED LOANS.—

38 (1) NOTICE.—

39 (A) IN GENERAL.—If, on default in repayment, the Adminis-  
 40 trator acquires a loan guaranteed under this section and identifies  
 41 the loan for inclusion in a bulk asset sale of defaulted or repur-

1           chased loans or other financings, the Administrator shall give  
2           prior notice of the inclusion of the loan in the bulk asset sale to  
3           any certified development company that has a contingent liability  
4           under this section.

5           (B) TIMING.—The notice shall be given to the certified develop-  
6           ment company as soon as possible after the financing is identified,  
7           but not less than 90 days before the date on which the Adminis-  
8           trator first makes any records on the financing available for exam-  
9           ination by prospective purchasers prior to its offering in a package  
10          of loans for bulk sale.

11          (2) LIMITATION.—The Administration shall not offer a loan de-  
12          scribed in paragraph (1) as part of a bulk sale unless the Adminis-  
13          trator—

14                (A) provides prospective purchasers with the opportunity to ex-  
15                amine the Administrator’s records with respect to the loan; and

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

17          (e) LOAN APPROVAL AUTHORITY.—

18                (1) IN GENERAL.—Notwithstanding section 33103(e)(1) of this title,  
19                and subject to such terms and conditions as the Administrator may es-  
20                tablish, the Administrator may—

21                    (A) permit a premier certified lender to approve, authorize,  
22                    close, service, foreclose, litigate (except that the Administrator  
23                    may monitor the conduct of any such litigation to which a premier  
24                    certified lender is a party), and liquidate loans that are funded  
25                    with the proceeds of a debenture issued by the premier certified  
26                    lender; and

27                    (B) authorize the guarantee of such a debenture.

28                (2) SCOPE OF REVIEW.—The approval of a loan by a premier cer-  
29                tified lender shall be subject to final approval as to eligibility of any  
30                guarantee by the Administrator under section 33103 of this title, but  
31                such final approval shall not include review of decisions by the lender  
32                involving creditworthiness, loan closing, or compliance with legal re-  
33                quirements imposed by law (including a regulation).

34          (f) REVIEW.—

35                (1) IN GENERAL.—After the issuance and sale of debentures under  
36                this section, the Administrator, at intervals of not greater than 12  
37                months, shall review the financings made by each premier certified  
38                lender.

39                (2) MATTERS TO BE REVIEWED.—A review shall include a premier  
40                certified lender’s credit decisions and general compliance with the eligi-

1 bility requirements for each financing approved under the premier cer-  
2 tified lenders program.

3 (3) CONSIDERATION OF FINDINGS.—The Administrator shall con-  
4 sider the findings of the review in carrying out subsection (g), but the  
5 review shall not affect any outstanding debenture guarantee.

6 (g) SUSPENSION OR REVOCATION.—

7 (1) IN GENERAL.—The designation of a certified development com-  
8 pany as a premier certified lender may be suspended or revoked if the  
9 Administrator determines that the certified development company—

10 (A) has not continued to meet the criteria for eligibility under  
11 subsection (b);

12 (B) has not established or maintained the loss reserve required  
13 under subsection (c);

14 (C) is failing to adhere to the Administrator’s regulations; or

15 (D) is violating any other applicable provision of law.

16 (2) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or rev-  
17 ocation under this subsection shall not affect any outstanding deben-  
18 ture guarantee.

19 (h) PROGRAM GOALS.—A certified development company that is des-  
20 ignated as a premier certified lender shall establish a goal of processing a  
21 minimum of not less than 50 percent of the loan applications that the cer-  
22 tified development company receives for assistance under the premier cer-  
23 tified lenders program.

24 **§ 33109. Foreclosure and liquidation of loans**

25 (a) DELEGATION OF AUTHORITY.—The Administrator shall delegate to a  
26 qualified development company that meets the eligibility requirements of  
27 subsection (b)(1) the authority to foreclose and liquidate, or to otherwise  
28 treat in accordance with this section, defaulted loans in its portfolio that  
29 are funded with the proceeds of guaranteed debentures.

30 (b) ELIGIBILITY FOR DELEGATION.—

31 (1) REQUIREMENTS.—A qualified development company shall be eli-  
32 gible for a delegation of authority under subsection (a) if—

33 (A) the qualified development company—

34 (i) participated in the loan liquidation pilot program under  
35 section 204 of the Small Business Programs Improvement  
36 Act of 1996 (15 U.S.C. 695 note; 110 Stat. 3009–736), as  
37 in effect on the day before promulgation of final regulations  
38 by the Administrator implementing this section;

39 (ii) is participating in the premier certified lenders pro-  
40 gram; or

1 (iii) during the 3 fiscal years immediately prior to seeking  
 2 such a delegation, has made an average of not less than 10  
 3 loans per year that are funded with the proceeds of guaran-  
 4 teed debentures; and

5 (B) the qualified development company—

6 (i) has one or more employees—

7 (I) who have not less than 2 years of substantive deci-  
 8 sionmaking experience in administering the liquidation  
 9 and workout of problem loans secured in a manner sub-  
 10 stantially similar to loans funded with the proceeds of  
 11 guaranteed debentures; and

12 (II) who have completed a training program on loan  
 13 liquidation developed by the Administrator in conjunction  
 14 with qualified development companies that meet the re-  
 15 quirements of this paragraph; or

16 (ii) submits to the Administrator documentation dem-  
 17 onstrating that the qualified development company has con-  
 18 tracted with a qualified third party to perform any liquidation  
 19 activities and secures the approval of the contract by the Ad-  
 20 ministrator with respect to the qualifications of the contractor  
 21 and the terms and conditions of liquidation activities.

22 (2) CONFIRMATION.—

23 (A) EXAMINATION.—On request, the Administrator shall exam-  
 24 ine the qualifications of a qualified development company de-  
 25 scribed in subsection (a) to determine whether the qualified devel-  
 26 opment company is eligible for the delegation of authority under  
 27 subsection (a).

28 (B) DETERMINATION OF INELIGIBILITY.—If the Administrator  
 29 determines that a qualified development company is not eligible,  
 30 the Administrator shall provide the qualified development company  
 31 with the reasons for ineligibility.

32 (c) SCOPE OF DELEGATED AUTHORITY.—

33 (1) IN GENERAL.—A qualified development company to which the  
 34 Administrator delegates authority under subsection (a) may, with re-  
 35 spect to any loan described in subsection (a)—

36 (A) perform all liquidation and foreclosure functions, including  
 37 the purchase in accordance with this subsection of any other in-  
 38 debtedness secured by the property securing the loan, in a reason-  
 39 able and sound manner according to commercially accepted prac-  
 40 tices, pursuant to a liquidation plan approved in advance by the  
 41 Administrator under paragraph (2)(A);

1 (B) litigate any matter relating to the performance of the func-  
 2 tions described in subparagraph (A), except that the Adminis-  
 3 trator may—

4 (i) defend or bring any claim if—

5 (I) the outcome of the litigation may adversely affect  
 6 the Administrator's management of the program; or

7 (II) the Administrator is entitled to legal remedies not  
 8 available to a qualified development company, and those  
 9 remedies will benefit the Administrator or the qualified  
 10 development company; or

11 (ii) oversee the conduct of any such litigation; and

12 (C) take other appropriate actions to mitigate loan losses in lieu  
 13 of total liquidation or foreclosures, including the restructuring of  
 14 a loan in accordance with prudent loan servicing practices and  
 15 pursuant to a workout plan approved in advance by the Adminis-  
 16 trator under paragraph (2)(C).

17 (2) APPROVAL BY THE ADMINISTRATOR.—

18 (A) LIQUIDATION PLAN.—

19 (i) SUBMISSION.—Before carrying out functions described  
 20 in paragraph (1)(A), a qualified development company shall  
 21 submit to the Administrator a proposed liquidation plan.

22 (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED LIQ-  
 23 UIDATION PLAN.—

24 (I) TIMING.—Not later than 15 business days after a  
 25 liquidation plan is received by the Administrator under  
 26 clause (i), the Administrator shall approve or reject the  
 27 liquidation plan.

28 (II) NOTICE OF NO DECISION.—With respect to any  
 29 liquidation plan that cannot be approved or denied with-  
 30 in the 15-day period required by subclause (I), the Ad-  
 31 ministrator shall within that period provide in accord-  
 32 ance with subparagraph (E) notice to the qualified devel-  
 33 opment company that submitted the liquidation plan.

34 (iii) ROUTINE ACTIONS.—In carrying out functions de-  
 35 scribed in paragraph (1)(A), a qualified development company  
 36 may undertake routine actions not addressed in a liquidation  
 37 plan without obtaining additional approval from the Adminis-  
 38 trator.

39 (B) PURCHASE OF INDEBTEDNESS.—

40 (i) IN GENERAL.—In carrying out functions described in  
 41 paragraph (1)(A), a qualified development company shall sub-

1           mit to the Administrator a request for written approval before  
2           committing the Administrator to the purchase of any other  
3           indebtedness secured by the property securing a defaulted  
4           loan.

5           (ii) ACTION BY THE ADMINISTRATOR ON REQUEST.—

6                 (I) TIMING.—Not later than 15 business days after re-  
7                 ceiving a request under clause (i), the Administrator  
8                 shall approve or deny the request.

9                 (II) NOTICE OF NO DECISION.—With respect to any  
10                request that cannot be approved or denied within the 15-  
11                day period required by subclause (I), the Administrator  
12                shall within that period provide in accordance with sub-  
13                paragraph (E) notice to the qualified development com-  
14                pany that submitted the request.

15          (C) WORKOUT PLAN.—

16               (i) IN GENERAL.—In carrying out functions described in  
17               paragraph (1)(C), a qualified development company shall sub-  
18               mit to the Administrator a proposed workout plan.

19               (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED WORK-  
20               OUT PLAN.—

21                 (I) TIMING.—Not later than 15 business days after a  
22                 workout plan is received by the Administrator under  
23                 clause (i), the Administrator shall approve or reject the  
24                 workout plan.

25                 (II) NOTICE OF NO DECISION.—With respect to any  
26                 workout plan that cannot be approved or denied within  
27                 the 15-day period required by subclause (I), the Admin-  
28                 istrator shall, within that period, provide in accordance  
29                 with subparagraph (E) notice to the qualified develop-  
30                 ment company that submitted the workout plan.

31          (D) COMPROMISE OF INDEBTEDNESS.—In carrying out func-  
32          tions described in paragraph (1)(A), a qualified development com-  
33          pany may—

34               (i) consider an offer made by an obligor to compromise the  
35               debt for less than the full amount owing; and

36               (ii) pursuant to such an offer, release any obligor or other  
37               party contingently liable, if the qualified development com-  
38               pany secures the written approval of the Administrator.

39          (E) CONTENTS OF NOTICE OF NO DECISION.—A notice provided  
40          by the Administrator under subparagraph (A)(ii)(II), (B)(ii)(II),  
41          or (C)(ii)(II)—

- 1 (i) shall be in writing;
- 2 (ii) shall state the specific reason for the Administrator's
- 3 inability to act on a liquidation plan, request, or workout
- 4 plan;
- 5 (iii) shall include an estimate of the additional time re-
- 6 quired by the Administrator to act on the liquidation plan, re-
- 7 quest, or workout plan; and
- 8 (iv) if the Administrator cannot act because insufficient in-
- 9 formation or documentation was provided by the qualified de-
- 10 velopment company that submitted the liquidation plan, re-
- 11 quest, or workout plan, shall specify the nature of such addi-
- 12 tional information or documentation.

13 (3) CONFLICT OF INTEREST.—In carrying out functions described in

14 paragraph (1), a qualified development company shall take no action

15 that would result in an actual or apparent conflict of interest between

16 the qualified development company (or any employee of the qualified

17 development company) and any third party lender, associate of a third

18 party lender, or any other person participating in a liquidation, fore-

19 closure, or loss mitigation action.

20 (d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administrator

21 may revoke or suspend a delegation of authority under this section to a

22 qualified development company if the Administration determines that the

23 qualified development company—

- 24 (1) does not meet the requirements of subsection (b)(1);
- 25 (2) has violated any applicable regulation of the Administrator or
- 26 any other applicable law; or
- 27 (3) fails to comply with any reporting requirement that may be es-
- 28 tablished by the Administrator relating to the carrying out of functions
- 29 described in this section.

## 30 **Subtitle IV—Miscellaneous**

### 31 **CHAPTER 401—PRIME PROGRAM**

Sec.

40101. Definitions.
40102. Establishment of program.
40103. Uses of assistance.
40104. Allocation of assistance; subgrants.
40105. Matching requirement.
40106. Applications for assistance.
40107. Recordkeeping.
40108. Implementation.
40109. Authorization of appropriations.

#### 32 **§ 40101. Definitions**

33 In this chapter:

- 34 (1) CAPACITY BUILDING SERVICE.—The term “capacity building
- 35 service” means a service provided to an organization that is, or that

1 is in the process of becoming, a microenterprise development organiza-  
 2 tion or program, for the purpose of enhancing its ability to provide  
 3 training and services to disadvantaged entrepreneurs.

4 (2) COLLABORATIVE.—The term “collaborative” means 2 or more  
 5 nonprofit entities that agree to act jointly as a qualified organization  
 6 under the program.

7 (3) DISADVANTAGED ENTREPRENEUR.—The term “disadvantaged  
 8 entrepreneur” means a microentrepreneur that is—

9 (A) a low-income person;

10 (B) a very low-income person; or

11 (C) an entrepreneur that lacks adequate access to capital or  
 12 other resources essential for business success, or is economically  
 13 disadvantaged, as determined by the Administrator.

14 (4) INDIAN TRIBE.—The term “Indian tribe” has the meaning given  
 15 the term in section 103 of the Community Development Banking and  
 16 Financial Institutions Act of 1994 (12 U.S.C. 4702).

17 (5) INTERMEDIARY.—The term “intermediary” means a private,  
 18 nonprofit entity that seeks to serve qualified organizations.

19 (6) LOW-INCOME PERSON.—The term “low-income person” has the  
 20 meaning given the term in section 103 of the Community Development  
 21 Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

22 (7) MICROENTERPRISE.—The term “microenterprise” means a sole  
 23 proprietorship, partnership, or corporation that—

24 (A) has fewer than 5 employees; and

25 (B) generally lacks access to conventional loans, equity, or other  
 26 banking services.

27 (8) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PRO-  
 28 GRAM.—The term “microenterprise development organization or pro-  
 29 gram” means a nonprofit entity (including a community development  
 30 corporation or other nonprofit development organization or a social  
 31 service organization), or a program administered by such an entity,  
 32 that provides services to disadvantaged entrepreneurs.

33 (9) MICROENTREPRENEUR.—The term “microentrepreneur” means  
 34 the owner or developer of a microenterprise.

35 (10) PROGRAM.—The term “program” means the PRIME program.

36 (11) QUALIFIED ORGANIZATION.—The term “qualified organization”  
 37 means—

38 (A) a nonprofit microenterprise development organization or  
 39 program (or a group or collaborative thereof) that has a dem-  
 40 onstrated record of delivering microenterprise services to disadvan-  
 41 tagged entrepreneurs;



1 (B) an intermediary;

2 (C) a microenterprise development organization or program that  
3 is accountable to a local community, working in conjunction with  
4 a State or local government or Indian tribe; or

5 (D) an Indian tribe acting on its own, if the Indian tribe cer-  
6 tifies that no private organization or program referred to in this  
7 paragraph exists within its jurisdiction.

8 (12) TRAINING AND TECHNICAL ASSISTANCE.—The term “training  
9 and technical assistance” means service and support provided to a dis-  
10 advantaged entrepreneur, such as assistance for the purpose of enhanc-  
11 ing business planning, marketing, management, financial management  
12 skills, and assistance for the purpose of accessing financial services.

13 (13) VERY LOW-INCOME PERSON.—The term “very low-income per-  
14 son” means a person having an income, adjusted for family size, of not  
15 more than 150 percent of the poverty line (as defined in section 673  
16 of the Community Services Block Grant Act (42 U.S.C. 9902), includ-  
17 ing any revision required by that section).

18 **§ 40102. Establishment of program**

19 The Administrator shall establish a microenterprise technical assistance  
20 and capacity building grant program, to be known as the program for in-  
21 vestment in microenterprise or the PRIME program, to provide assistance  
22 in the form of grants to qualified organizations in accordance with this  
23 chapter.

24 **§ 40103. Uses of assistance**

25 A qualified organization shall use a grant made under the program—

26 (1) to provide training and technical assistance to disadvantaged en-  
27 trepreneurs;

28 (2) to provide training and capacity building services to microenter-  
29 prise development organizations and programs and groups of such or-  
30 ganizations to assist the organizations and programs in developing mi-  
31 croenterprise training and services;

32 (3) to aid in researching and developing the best practices in the  
33 field of microenterprise and technical assistance programs for disadvan-  
34 taged entrepreneurs; and

35 (4) for such other activities as the Administrator determines are con-  
36 sistent with the purposes of the program.

37 **§ 40104. Allocation of assistance; subgrants**

38 (a) ALLOCATION OF ASSISTANCE.—

39 (1) IN GENERAL.—The Administrator shall allocate assistance under  
40 the program to ensure that—

1 (A) activities described in section 40103(1) of this title are  
2 funded using not less than 75 percent of amounts made available  
3 for such assistance; and

4 (B) activities described in section 40103(2) of this title are  
5 funded using not less than 15 percent of amounts made available  
6 for such assistance.

7 (2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may re-  
8 ceive more than 10 percent of the total funds appropriated for the pro-  
9 gram in a single fiscal year.

10 (b) TARGETED ASSISTANCE.—The Administrator shall ensure that not  
11 less than 50 percent of the grants made under the program are used to ben-  
12 efit very low-income persons, including those residing on Indian reserva-  
13 tions.

14 (c) SUBGRANTS.—

15 (1) IN GENERAL.—A qualified organization receiving assistance  
16 under the program may provide grants using that assistance to quali-  
17 fied small and emerging microenterprise organizations and programs,  
18 subject to such regulations as the Administrator determines to be ap-  
19 propriate.

20 (2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 per-  
21 cent of the amount of assistance received by a qualified organization  
22 under the program may be used for administrative expenses in connec-  
23 tion with the making of subgrants under paragraph (1).

24 (d) DIVERSITY.—In making grants under the program, the Administrator  
25 shall ensure that grant recipients include both large and small microenter-  
26 prise organizations, serving urban, rural, and Indian tribal communities  
27 with diverse populations.

28 (e) PROHIBITION OF PREFERENTIAL CONSIDERATION OF CERTAIN SBA  
29 PROGRAM PARTICIPANTS.—In making grants under the program, the Ad-  
30 ministrator shall ensure that any application made by a qualified organiza-  
31 tion that is a participant in the microloan program does not receive pref-  
32 erential consideration over applications from other qualified organizations  
33 that are not participants in the microloan program.

34 **§ 40105. Matching requirement**

35 (a) IN GENERAL.—Financial assistance under the program shall be  
36 matched with funds from sources other than the Federal Government in the  
37 amount of not less than 50 cents for each dollar provided by the Adminis-  
38 tration.

39 (b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from  
40 loan sources, and in-kind resources of a grant recipient from public or pri-

1 vate sources may be used to comply with the matching requirement under  
2 subsection (a).

3 (c) EXCEPTION.—

4 (1) IN GENERAL.—In the case of an applicant for assistance under  
5 the program with severe constraints on available sources of matching  
6 funds, the Administrator may reduce or eliminate the matching re-  
7 quirement under subsection (a).

8 (2) LIMITATION.—Not more than 10 percent of the total funds made  
9 available to carry out the program for any fiscal year may be excepted  
10 under paragraph (1) from the matching requirement under subsection  
11 (a).

### 12 **§ 40106. Applications for assistance**

13 An application for assistance under the program shall be submitted in  
14 such form and in accordance with such procedures as the Administrator  
15 shall establish.

### 16 **§ 40107. Recordkeeping**

17 The requirements of section 115 of the Community Development Banking  
18 and Financial Institutions Act of 1994 (12 U.S.C. 4714) shall apply to a  
19 qualified organization receiving assistance from the Administrator under the  
20 program as if the qualified organization were a community development fi-  
21 nancial institution receiving assistance from the Fund under subtitle A of  
22 that Act (12 U.S.C. 4701 et seq.).

### 23 **§ 40108. Implementation**

24 The Administrator shall by regulation establish such requirements as are  
25 necessary to carry out this chapter.

### 26 **§ 40109. Authorization of appropriations**

27 There are authorized to be appropriated to the Administrator to carry out  
28 this chapter—

- 29 (1) \$15,000,000 for fiscal year 2000;
- 30 (2) \$15,000,000 for fiscal year 2001;
- 31 (3) \$15,000,000 for fiscal year 2002; and
- 32 (4) \$15,000,000 for fiscal year 2003.

## 33 **CHAPTER 403—WOMEN'S BUSINESS ENTERPRISE**

### 34 **DEVELOPMENT**

Sec.

- 40301. Definitions.
- 40302. Establishment of the Interagency Committee.
- 40303. Duties of the Interagency Committee.
- 40304. Membership of the Interagency Committee.
- 40305. Reports from the Interagency Committee.
- 40306. Establishment of the National Women's Business Council.
- 40307. Duties of the Council.
- 40308. Membership and staff of the Council.
- 40309. Studies and other research.
- 40310. Authorization of appropriations.

1 **§ 40301. Definitions**

2 In this chapter:

3 (1) CONTROL.—The term “control” means to exercise the power to  
4 make policy decisions concerning a business.

5 (2) COUNCIL.—The term “Council” means the National Women’s  
6 Business Council established under section 40306 of this title.

7 (3) INTERAGENCY COMMITTEE.—The term “Interagency Committee”  
8 means the Interagency Committee on Women’s Business Enterprise es-  
9 tablished under section 40302 of this title.

10 (4) OPERATE.—The term “operate” means to be actively involved in  
11 the day-to-day management of a business.

12 (5) WOMEN’S BUSINESS ENTERPRISE.—The term “women’s business  
13 enterprise” means—

14 (A) a business or businesses owned by a woman or a group of  
15 women; or

16 (B) the establishment, maintenance, or development of a busi-  
17 ness or businesses by a woman or a group of women.

18 (6) WOMEN-OWNED BUSINESS.—The term “women-owned business”  
19 means a small business—

20 (A) that a woman or a group of women controls and operates;  
21 and

22 (B) of which not less than 51 percent is owned by a woman or  
23 a group of women.

24 **§ 40302. Establishment of the Interagency Committee**

25 There is established an interagency committee to be known as the Inter-  
26 agency Committee on Women’s Business Enterprise.

27 **§ 40303. Duties of the Interagency Committee**

28 (a) IN GENERAL.—The Interagency Committee shall—

29 (1) monitor, coordinate, and promote the plans, programs, and oper-  
30 ations of the Federal agencies that may contribute to the establishment  
31 and growth of women’s business enterprises;

32 (2) develop and promote new public sector initiatives, policies, pro-  
33 grams, and plans designed to foster women’s business enterprises;

34 (3) review, monitor, and coordinate plans and programs, developed  
35 in the public sector, that affect the ability of women-owned businesses  
36 to obtain capital and credit; and

37 (4) promote and assist, as appropriate, in the development of surveys  
38 of women-owned businesses.

39 (b) MEETINGS.—

1 (1) IN GENERAL.—The Interagency Committee shall meet not less  
2 than biannually at such times as the Interagency Committee deter-  
3 mines to be necessary to perform the duties under subsection (a).

4 (2) QUORUM.—A majority of the members of the Interagency Com-  
5 mittee shall constitute a quorum for the approval of recommendations  
6 or reports issued under this section.

7 (e) INTERACTION WITH COUNCIL.—

8 (1) CONSULTATION.—In performing its duties under subsection (a),  
9 the Interagency Committee shall consult with the Council.

10 (2) JOINT MEETINGS.—The Interagency Committee—

11 (A) shall meet jointly with the Council not less frequently than  
12 biannually; and

13 (B) may meet jointly with the Council more frequently at the  
14 discretion of the chairperson of the Interagency Committee and  
15 the chairperson of the Council.

16 (3) CHAIRPERSON.—The chairperson of the Interagency Committee  
17 shall serve as chairperson of any joint meeting of the Interagency Com-  
18 mittee and the Council.

19 **§ 40304. Membership of the Interagency Committee**

20 (a) IN GENERAL.—

21 (1) PARTICIPANTS.—The Interagency Committee shall be composed  
22 of one representative from each of the following:

23 (A) The Department of Commerce.

24 (B) The Department of Defense.

25 (C) The Department of Health and Human Services.

26 (D) The Department of Labor.

27 (E) The Administration.

28 (F) The Department of Transportation.

29 (G) The Department of the Treasury.

30 (H) The General Services Administration.

31 (I) The Board of Governors of the Federal Reserve.

32 (J) The Executive staff of the President engaged in policy-  
33 making activities.

34 (2) APPOINTMENTS.—

35 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
36 head of each entity listed in paragraph (1) shall designate a rep-  
37 resentative who—

38 (i) shall be a policymaking official within the entity; and

39 (ii) shall report directly to the head of the entity on the  
40 status of the activities of the Interagency Committee.

1 (B) SMALL BUSINESS ADMINISTRATION.—With respect to the  
2 Administration, the representative shall be the Assistant Adminis-  
3 trator of the Office of Women’s Business Ownership, who shall—

4 (i) serve as the vice chairperson of the Interagency Com-  
5 mittee;

6 (ii) report directly to the Administrator on the status of the  
7 activities on the Interagency Committee; and

8 (iii) serve as the Interagency Committee Liaison to the  
9 Council.

10 (3) OTHER PARTICIPATION.—Representatives of the Federal Govern-  
11 ment not listed in paragraph (1) may participate in the meetings and  
12 functions of the Interagency Committee on a temporary basis as needed  
13 to carry out specific Interagency Committee goals.

14 (b) APPOINTMENT OF CHAIRPERSON.—The President, in consultation  
15 with the Administrator, shall appoint one of the members of the Interagency  
16 Committee to serve as chairperson.

17 (c) NONCOMPENSATION.—A member of the Interagency Committee shall  
18 serve without additional pay for such membership.

19 (d) DETAIL OF FEDERAL EMPLOYEES.—On request by the chairperson  
20 of the Interagency Committee, the head of any Federal agency may detail  
21 any of the personnel of the Federal agency to assist the Interagency Com-  
22 mittee in carrying out its duties under this chapter without regard to sec-  
23 tion 3341 of title 5.

#### 24 **§ 40305. Reports from the Interagency Committee**

25 The Interagency Committee, through the Administrator, shall annually  
26 submit to the President, the Committee on Small Business and Entrepre-  
27 neurship of the Senate, and the Committee on Small Business of the House  
28 of Representatives a report that contains—

29 (1) a detailed description of the activities of the Interagency Com-  
30 mittee, including a verbatim report on the status of progress of the  
31 Interagency Committee in meeting its responsibilities and duties under  
32 section 40303(a) of this title;

33 (2) the findings and conclusions of the Interagency Committee; and

34 (3) the Interagency Committee’s recommendations for such legisla-  
35 tion and administrative actions as the Interagency Committee considers  
36 appropriate to promote the development of small business concerns  
37 owned and controlled by women.

1    **§ 40306. Establishment of the National Women’s Business**  
2                    **Council**

3            There is established a council to be known as the National Women’s  
4    Business Council, which shall serve as an independent source of advice and  
5    policy recommendations to—

- 6            (1) the Interagency Committee;  
7            (2) the Administrator (through the Assistant Administrator of the  
8            Office of Women’s Business Ownership);  
9            (3) Congress; and  
10           (4) the President.

11    **§ 40307. Duties of the Council**

12           (a) IN GENERAL.—The Council shall advise and consult with the Inter-  
13    agency Committee on matters relating to the activities, functions, and poli-  
14    cies of the Interagency Committee, as provided in this chapter.

15           (b) MEETINGS.—

16            (1) IN GENERAL.—The Council—

17              (A) shall meet jointly with the Interagency Committee as pro-  
18              vided in section 40303(c) of this title; and

19              (B) shall meet separately at such times as the Council considers  
20              necessary.

21            (2) QUORUM.—A majority of the members of the Council shall con-  
22            stitute a quorum for the approval of recommendations or reports issued  
23            under this section.

24           (c) RECOMMENDATIONS AND REPORTS.—The Council shall—

25              (1) make annual recommendations for consideration by the Inter-  
26              agency Committee; and

27              (2) provide reports and make such other recommendations as the  
28              Council considers appropriate to—

29                  (A) the Interagency Committee;

30                  (B) the President;

31                  (C) the Administrator (through the Assistant Administrator of  
32                  the Office of Women’s Business Ownership); and

33                  (D) the Committee on Small Business and Entrepreneurship of  
34                  the Senate and the Committee on Small Business of the House  
35                  of Representatives.

36           (d) OTHER DUTIES.—The Council shall—

37              (1) review, coordinate, and monitor plans and programs developed in  
38              the public and private sectors that affect the ability of women-owned  
39              business enterprises to obtain capital and credit;

40              (2) promote and assist in the development of a women’s business  
41              census and other surveys of women-owned businesses;

1 (3) monitor and promote the plans, programs, and operations of  
 2 Federal agencies that may contribute to the establishment and growth  
 3 of women's business enterprise;

4 (4) develop and promote new initiatives, policies, programs, and  
 5 plans designed to foster women's business enterprises;

6 (5) advise and consult with the Interagency Committee in the design  
 7 of a comprehensive plan for a joint public-private sector effort to facili-  
 8 tate growth and development of women's business enterprises; and

9 (6) not later than 90 days after the last day of each fiscal year, sub-  
 10 mit to the President, the Committee on Small Business and Entrepre-  
 11 neurship of the Senate, and the Committee on Small Business of the  
 12 House of Representatives, a report that contains—

13 (A) a detailed description of the activities of the Council, includ-  
 14 ing a status report on the Council's progress toward meeting its  
 15 duties under this subsection and subsection (a);

16 (B) the findings, conclusions, and recommendations of the  
 17 Council; and

18 (C) the Council's recommendations for such legislation and ad-  
 19 ministrative actions as the Council considers appropriate to pro-  
 20 mote the development of small business concerns owned and con-  
 21 trolled by women.

22 (e) FORM OF INFORMATION.—The information described in subpara-  
 23 graphs (A) to (C) of subsection (d)(6) shall be reported in a report under  
 24 subsection (d) verbatim, with any separate additional, concurring, or dis-  
 25 senting views of the Administrator.

## 26 **§ 40308. Membership and staff of the Council**

27 (a) CHAIRPERSON.—

28 (1) IN GENERAL.—The President shall appoint an individual to  
 29 serve as chairperson of the Council, in consultation with the Adminis-  
 30 trator.

31 (2) QUALIFICATIONS.—The chairperson of the Council shall be a  
 32 prominent business woman who is qualified to head the Council by vir-  
 33 tue of her education, training, and experience.

34 (b) OTHER MEMBERS.—The Administrator shall, after receiving the rec-  
 35 ommendations of the Chairman and the Ranking Member of the Committee  
 36 on Small Business and Entrepreneurship of the Senate and the Committee  
 37 on Small Business of the House of Representatives, appoint, in consultation  
 38 with the chairperson of the Council, 14 members of the Council, of whom—

39 (1) 4 shall be—

40 (A) owners of small business concerns; and

41 (B) members of the same political party as the President;



1 (2) 4 shall—

2 (A) be owners of small business concerns; and

3 (B) not be members of the same political party as the Presi-  
4 dent; and

5 (3) 6 shall be representatives of women's business organizations, in-  
6 cluding representatives of women's business center sites.

7 (e) DIVERSITY.—In appointing members of the Council, the Adminis-  
8 trator shall, to the extent possible, ensure that the members appointed re-  
9 flect geographic (including both urban and rural areas), racial, economic,  
10 and public-private sectoral diversity.

11 (d) TERMS.—A member of the Council shall be appointed for a term of  
12 3 years.

13 (e) OTHER FEDERAL SERVICE.—If, after appointment to the Council, a  
14 member of the Council becomes an officer or employee of the Federal Gov-  
15 ernment, the member may continue as a member of the Council for not  
16 longer than the 30-day period beginning on the date on which the member  
17 becomes such an officer or employee.

18 (f) VACANCIES.—

19 (1) IN GENERAL.—A vacancy on the Council shall be filled not later  
20 than 30 days after the date on which the vacancy occurs, in the man-  
21 ner in which the original appointment was made, and shall be subject  
22 to any conditions that applied to the original appointment.

23 (2) UNEXPIRED TERM.—An individual chosen to fill a vacancy shall  
24 be appointed for the unexpired term of the member replaced.

25 (g) REIMBURSEMENTS.—A member of the Council shall serve without pay  
26 for such membership, except that a member shall be entitled to reimburse-  
27 ment for travel, subsistence, and other necessary expenses incurred by the  
28 member in carrying out the functions of the Council, in the same manner  
29 as a person serving on an advisory committee under section 10315 of this  
30 title.

31 (h) EXECUTIVE DIRECTOR AND ADDITIONAL EMPLOYEES.—

32 (1) EXECUTIVE DIRECTOR.—The Administrator, in consultation with  
33 the chairperson of the Council, shall appoint an executive director of  
34 the Council.

35 (2) ADDITIONAL EMPLOYEES.—On recommendation by the executive  
36 director, the chairperson of the Council may appoint and fix the pay  
37 of 4 additional employees of the Council, at a rate of pay not to exceed  
38 the maximum rate of pay payable for a position at GS-15 of the Gen-  
39 eral Schedule.

40 (3) APPROPRIATIONS.—An appointment under paragraph (1) or (2)  
41 shall be subject to the appropriation of funds.

1 (i) RATES OF PAY.—The executive director and staff of the Council may  
 2 be appointed without regard to the provisions of title 5 governing appoint-  
 3 ments in the competitive service, and except as provided in subsection (e),  
 4 may be paid without regard to the provisions of chapter 51 and subchapter  
 5 III of chapter 53 of that title relating to classification and General Schedule  
 6 pay rates, except that the executive director may not receive pay in excess  
 7 of the annual rate of basic pay payable for a position at ES-3 of the Senior  
 8 Executive Pay Schedule under section 5382 of title 5.

9 **§ 40309. Studies and other research**

10 (a) IN GENERAL.—The Council may conduct such studies and other re-  
 11 search relating to the award of Federal prime contracts and subcontracts  
 12 to women-owned businesses, to access to credit and investment capital by  
 13 women entrepreneurs, or to other issues relating to women-owned busi-  
 14 nesses, as the Council determines to be appropriate.

15 (b) CONTRACT AUTHORITY.—In conducting any study or other research  
 16 under this section, the Council may contract with one or more public or pri-  
 17 vate entities.

18 **§ 40310. Authorization of appropriations**

19 (a) IN GENERAL.—There is authorized to be appropriated to carry out  
 20 this chapter \$1,000,000 for each of fiscal years 2001 through 2003, of  
 21 which \$550,000 shall be available in each such fiscal year to carry out sec-  
 22 tion 40309 of this title.

23 (b) BUDGET REVIEW.—No amount made available under this section for  
 24 any fiscal year may be obligated or expended by the Council before the date  
 25 on which the Council reviews and approves the operating budget of the  
 26 Council to carry out the responsibilities of the Council for that fiscal year.

27 **CHAPTER 451—MISCELLANEOUS**

Sec.

- 45101. Small business economic policy.
- 45102. Small Business Manufacturing Task Force.
- 45103. Test program for negotiation of comprehensive small business subcontracting plans.
- 45104. Coordination of Federal assistance for small business concerns adversely affected by NAFTA.
- 45105. Disaster aid to major sources of employment.
- 45106. Background check policy; fingerprinting.
- 45107. Expedited resolution of contract dispute matters.
- 45108. Small Business Procurement Advisory Council.
- 45109. Small business energy efficiency.
- 45110. Information regarding, and marketing of, programs for veterans and reservists.
- 45111. Outreach regarding health insurance options available to children.

28 **§ 45101. Small business economic policy**

29 (a) DECLARATION OF SMALL BUSINESS POLICY.—

30 (1) PRESERVATION AND PROMOTION OF COMPETITIVE FREE ENTER-  
 31 PRISE SYSTEM.—For the purpose of preserving and promoting a com-  
 32 petitive free enterprise economic system, Congress declares that it is  
 33 the continuing policy and responsibility of the Federal Government to

1 use all practical means and to take such actions as are necessary, con-  
 2 sistent with its needs and obligations and other essential considerations  
 3 of national policy, to implement and coordinate all Federal agency poli-  
 4 cies, programs, and activities to—

5 (A) foster the economic interests of small businesses;

6 (B) ensure the existence of a competitive economic climate con-  
 7 ductive to the development, growth, and expansion of small busi-  
 8 nesses;

9 (C) establish incentives to ensure that adequate capital and  
 10 other resources at competitive prices are available to small busi-  
 11 nesses;

12 (D) reduce the concentration of economic resources and expand  
 13 competition; and

14 (E) provide an opportunity for entrepreneurship, inventiveness,  
 15 and the creation and growth of small businesses.

16 (2) AVAILABILITY OF ADEQUATE CAPITAL TO SMALL BUSINESSES.—

17 Congress declares that the Federal Government is committed to a pol-  
 18 icy of utilizing all reasonable means, consistent with the overall eco-  
 19 nomic policy goals of the Nation and the preservation of the competi-  
 20 tive free enterprise system of the Nation, to establish private sector in-  
 21 centives that will help ensure that adequate capital at competitive  
 22 prices is available to small businesses.

23 (b) PROMOTION OF INVESTMENT.—To fulfill the policy stated in sub-  
 24 section (a), each Federal agency shall use all reasonable means to coordi-  
 25 nate, create, and sustain policies and programs that promote investment in  
 26 small businesses, including the investments that expand employment oppor-  
 27 tunities and foster the effective and efficient use of human and natural re-  
 28 sources in the national economy.

29 (c) REPORT ON SMALL BUSINESS AND COMPETITION.—

30 (1) IN GENERAL.—Not later than January 20 of each year, the  
 31 President shall submit to the Committee on Small Business and Entre-  
 32 preneurship of the Senate and the Committee on Small Business of the  
 33 House of Representatives a report on small business and competition.

34 (2) CONTENTS.—A report under paragraph (1) shall—

35 (A) examine the current role of small business in the economy  
 36 on an industry-by-industry basis;

37 (B) present current and historical data on production, employ-  
 38 ment, investment, population, job creation and retention, annual  
 39 business failures, annual business startups, and other economic  
 40 variables for small business in the economy as a whole and for  
 41 small business in each sector of the economy, with, to the extent

1 practicable, specific statistics divided as to urban, suburban, and  
2 rural areas;

3 (C) identify economic trends that may affect the small business  
4 sector and the state of competition;

5 (D)(i) examine the effects on small business and competition of  
6 policies, programs, and activities, including—

7 (I) the Internal Revenue Code of 1986 (26 U.S.C. 1 et  
8 seq.);

9 (II) the Employee Retirement Income Security Act of 1974  
10 (29 U.S.C. 1001 et seq.);

11 (III) the Securities Act of 1933 (15 U.S.C. 77a et seq.);  
12 and

13 (IV) the Securities Exchange Act of 1934 (15 U.S.C. 78a  
14 et seq.);

15 (ii) identify problems generated by such policies, programs, and  
16 activities; and

17 (iii) recommend legislative and administrative solutions to such  
18 problems;

19 (E) recommend a program for carrying out the policy declared  
20 in subsection (a), including such recommendations for legislation  
21 as the President considers necessary or desirable; and

22 (F) include an appendix that discloses, for each Federal agen-  
23 cy—

24 (i) the total dollar value of all Federal contracts (including  
25 subcontracts) exceeding \$10,000 in amount; and

26 (ii) the dollar amount of those contracts awarded to—

27 (I) small businesses;

28 (II) minority-owned businesses;

29 (III) female-owned businesses; and

30 (IV) veteran-owned businesses.

31 (3) DETAILING OF INFORMATION.—The information required to be  
32 contained in the report under paragraph (1) shall separately detail the  
33 portions of the information that are relevant to—

34 (A) small business concerns owned and controlled by socially  
35 and economically disadvantaged individuals, by gender;

36 (B) small business concerns owned and controlled by women;

37 (C) qualified HUBZone small business concerns; and

38 (D) small business concerns owned and controlled by veterans  
39 and small business concerns owned and controlled by service-dis-  
40 abled veterans.

1 (4) SUPPLEMENTARY REPORTS.—The President may from time to  
2 time submit to the Committee on Small Business and Entrepreneurship  
3 of the Senate and the Committee on Small Business of the House of  
4 Representatives reports supplementary to a report under paragraph (1)  
5 that includes such supplementary or revised recommendations as the  
6 President considers necessary or desirable to achieve the policy declared  
7 in subsection (a).

8 **§ 45102. Small Business Manufacturing Task Force**

9 (a) ESTABLISHMENT.—The Administrator shall establish a Small Busi-  
10 ness Manufacturing Task Force (referred to in this section as the “Task  
11 Force”) to address the concerns of small manufacturers.

12 (b) CHAIR.—The Administrator shall assign a member of the Task Force  
13 to serve as chair of the Task Force.

14 (c) DUTIES.—The Task Force shall—

15 (1) evaluate and identify whether programs and services are suffi-  
16 cient to serve the needs of small manufacturers;

17 (2) actively promote the programs and services of the Administration  
18 that serve small manufacturers; and

19 (3) identify and study the unique conditions facing small manufac-  
20 turers and develop and propose policy initiatives to support and assist  
21 small manufacturers.

22 (d) MEETINGS.—

23 (1) FREQUENCY.—The Task Force shall meet not less than 4 times  
24 a year, and more frequently if necessary to perform its duties.

25 (2) QUORUM.—A majority of the members of the Task Force shall  
26 constitute a quorum to approve recommendations or reports.

27 (e) PERSONNEL MATTERS.—

28 (1) COMPENSATION OF MEMBERS.—A member of the Task Force  
29 shall serve without compensation in addition to that received for serv-  
30 ices rendered as an officer or employee of the United States.

31 (2) DETAIL OF SBA EMPLOYEES.—Any employee of the Administra-  
32 tion may be detailed to the Task Force without reimbursement and  
33 without interruption or loss of civil service status or privilege.

34 (f) REPORT.—The Task Force shall annually submit a report containing  
35 the findings and recommendations of the Task Force to—

36 (1) the President;

37 (2) the Committee on Small Business and Entrepreneurship of the  
38 Senate; and

39 (3) the Committee on Small Business of the House of Representa-  
40 tives.

1    **§ 45103. Test program for negotiation of comprehensive**  
2                    **small business subcontracting plans**

3           (a) TEST PROGRAM.—

4               (1) IN GENERAL.—The Secretary of Defense shall establish a test  
5               program under which contracting activities in the military departments  
6               and the defense agencies are authorized to undertake one or more dem-  
7               onstration projects to determine whether the negotiation and adminis-  
8               tration of comprehensive subcontracting plans will reduce administra-  
9               tive burdens on contractors while enhancing opportunities provided  
10              under Department of Defense contracts for small business concerns  
11              and small business concerns owned and controlled by socially and eco-  
12              nomically disadvantaged individuals.

13             (2) BROAD RANGE OF SUPPLIES AND SERVICES.—In selecting the  
14             contracting activities to undertake demonstration projects, the Sec-  
15             retary of Defense shall take such action as is necessary to ensure that  
16             a broad range of the supplies and services acquired by the Department  
17             of Defense are included in the test program.

18             (3) CONSULTATION; PUBLIC COMMENT.—In developing the test pro-  
19             gram, the Secretary of Defense shall—

20                 (A) consult with the Administrator; and

21                 (B) provide an opportunity for public comment on the test pro-  
22                 gram.

23           (b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

24               (1) IN GENERAL.—In a demonstration project under the test pro-  
25               gram, the Secretary of a military department or head of a defense  
26               agency shall negotiate, monitor, and enforce compliance with a com-  
27               prehensive subcontracting plan with a Department of Defense con-  
28               tractor described in paragraph (3).

29               (2) SCOPE.—The comprehensive subcontracting plan of a con-  
30               tractor—

31                 (A) shall apply to the entire business organization of the con-  
32                 tractor or to one or more of the contractor's divisions or operating  
33                 elements, as specified in the subcontracting plan; and

34                 (B) shall cover each Department of Defense contract that is en-  
35                 tered into by the contractor and each subcontract that is entered  
36                 into by the contractor as the subcontractor under a Department  
37                 of Defense contract.

38               (3) DEPARTMENT OF DEFENSE CONTRACTOR.—A Department of  
39               Defense contractor referred to in paragraph (1) is, with respect to a  
40               comprehensive subcontracting plan negotiated in any fiscal year, a  
41               business concern that, during the immediately preceding fiscal year,

1 furnished the Department of Defense with goods or services (including  
 2 professional services, research and development services, and construc-  
 3 tion services) under at least 3 Department of Defense contracts having  
 4 an aggregate value of at least \$5,000,000.

5 (c) WAIVER OF CERTAIN SUBCONTRACTING PLAN REQUIREMENTS.—A  
 6 Department of Defense contractor is not required to negotiate or submit a  
 7 subcontracting plan under section 24302(a) or 24303(e) of this title with  
 8 respect to a Department of Defense contract if—

9 (1) the contractor has negotiated a comprehensive subcontracting  
 10 plan under the test program that includes the matters specified in sec-  
 11 tion 24303(d) of this title;

12 (2) such matters have been determined to be acceptable by the Sec-  
 13 retary of the military department or head of a Defense Agency negoti-  
 14 ating the comprehensive subcontracting plan; and

15 (3) the comprehensive subcontracting plan applies to the contract.

16 (d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A  
 17 COMPANY-WIDE SUBCONTRACTING PLAN.—A contractor that has nego-  
 18 tiated a comprehensive subcontracting plan under the test program shall be  
 19 subject to section 24305 of this title regarding the assessment of liquidated  
 20 damages for failure to make a good faith effort to comply with its company-  
 21 wide plan and the goals specified in the plan.

22 (e) TERMINATION.—The test program shall terminate on September 30,  
 23 2010.

24 **§ 45104. Coordination of Federal assistance for small busi-**  
 25 **ness concerns adversely affected by NAFTA**

26 The Administrator shall coordinate Federal assistance to provide coun-  
 27 seling to small business concerns adversely affected by the North American  
 28 Free Trade Agreement.

29 **§ 45105. Disaster aid to major sources of employment**

30 (a) IN GENERAL.—The Administrator may provide any nonagricultural  
 31 enterprise that has constituted a major source of employment in an area  
 32 suffering a major disaster and that is no longer in substantial operation as  
 33 a result of the disaster a loan in such amount as is necessary to enable the  
 34 enterprise to resume operations in order to assist in restoring the economic  
 35 viability of the disaster area.

36 (b) LOAN AMOUNT.—A loan under this section shall be made without re-  
 37 gard to any limitation on the amount of a loan that may otherwise be im-  
 38 posed by any other provision of law (including a regulation).

39 (c) ADDITIONAL ASSISTANCE.—Assistance under this section shall be in  
 40 addition to any other Federal disaster assistance, except that such other as-

1 assistance may be adjusted or modified to the extent that the Under Secretary  
2 of Emergency Preparedness and Response considers appropriate.

3 (d) INTEREST.—A loan made under this section shall bear interest at a  
4 rate determined by the Secretary of the Treasury, taking into consideration  
5 the current average market yield on outstanding marketable obligations of  
6 the United States with remaining periods to maturity of 10 to 12 years,  
7 reduced by not to exceed 2 percent per year. In no event shall a loan made  
8 under this section bear interest at a rate in excess of 6 percent per year.

9 (e) DEFERRAL OF PAYMENT OF PRINCIPAL AND INTEREST.—The Presi-  
10 dent, if the President considers it necessary, may defer payments of prin-  
11 cipal and interest on a loan under this section for a period not to exceed  
12 3 years after the date of the loan. Any such deferred payments shall bear  
13 interest at the rate determined under subsection (d).

#### 14 **§ 45106. Background check policy; fingerprinting**

15 The Administrator shall not require fingerprints to be obtained for back-  
16 ground check purposes from any participant in any Administration program  
17 who is serving on a voluntary basis and without compensation unless the  
18 Administrator has reasonable grounds to believe that the participant's  
19 record or background is such as to make the participant ineligible to partici-  
20 pate in the program.

#### 21 **§ 45107. Expedited resolution of contract dispute matters**

22 (a) REQUIRED FAR PROVISION.—The Federal Acquisition Regulation  
23 shall include provisions that require a contracting officer—

24 (1) to make every reasonable effort to respond in writing within 30  
25 days to any written request made to a contracting officer with respect  
26 to a matter relating to the administration of a contract that is received  
27 from a small business concern; and

28 (2) if the contracting officer is unable to reply within the 30-day pe-  
29 riod, to transmit to the contractor within that period a written notifica-  
30 tion of a specific date by which the contracting officer expects to re-  
31 spond.

32 (b) APPLICABILITY.—The provision required under subsection (a) shall  
33 not apply to a request for a contracting officer's decision under the Contract  
34 Disputes Act of 1978 (41 U.S.C. 601 et seq.).

35 (c) EFFECT OF SECTION.—This section does not create any right under  
36 the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

#### 37 **§ 45108. Small Business Procurement Advisory Council**

38 (a) ESTABLISHMENT.—There is established an interagency council to be  
39 known as the Small Business Procurement Advisory Council (referred to in  
40 this section as the "Council").

41 (b) DUTIES.—The duties of the Council are—



1 (1) to develop positions on proposed procurement regulations affect-  
2 ing the small business community; and

3 (2) to submit comments reflecting such positions to appropriate reg-  
4 ulatory authorities.

5 (c) MEMBERSHIP.—The Council shall be composed of the following mem-  
6 bers:

7 (1) The Administrator (or the designee of the Administrator).

8 (2) The Director of the Minority Business Development Agency.

9 (3) The head of each office of small and disadvantaged business uti-  
10 lization established under section 25109 of this title for each procuring  
11 agency.

12 (d) CHAIRMAN.—The Council shall be chaired by the Administrator.

13 (e) MEETINGS.—The Council shall meet at the call of the chairman as  
14 necessary to consider proposed procurement regulations affecting the small  
15 business community.

16 (f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition  
17 Regulatory Council and other appropriate regulatory authorities shall con-  
18 sider comments submitted in a timely manner under subsection (b)(2).

19 **§ 45109. Small business energy efficiency**

20 (a) DEFINITIONS.—In this section:

21 (1) DISABILITY.—The term “disability” has the meaning given the  
22 term in section 3 of the Americans with Disabilities Act of 1990 (42  
23 U.S.C. 12102).

24 (2) EFFICIENCY PROGRAM.—the term “efficiency program” means  
25 the small business energy efficiency program established under sub-  
26 section (c).

27 (3) ELECTRIC UTILITY.—The term “electric utility” has the meaning  
28 given the term in section 3 of the Public Utility Regulatory Policies  
29 Act of 1978 (16 U.S.C. 2602).

30 (4) GOVERNMENTWIDE PROGRAM.—The term “Governmentwide pro-  
31 gram” means the program established under subsection (b).

32 (5) HIGH-PERFORMANCE GREEN BUILDING.—The term “high-per-  
33 formance green building” has the meaning given the term in section  
34 401 of the Energy Independence and Security Act of 2007 (42 U.S.C.  
35 17061).

36 (6) ON-BILL FINANCING.—The term “on-bill financing” means a low  
37 interest or no interest financing agreement between a small business  
38 concern and an electric utility for the purchase or installation of equip-  
39 ment under which—

1 (A) the regularly scheduled payment of the small business con-  
2 cern to the electric utility is not reduced by the amount of the re-  
3 duction in cost attributable to the new equipment; and

4 (B) that amount is credited to the electric utility until the cost  
5 of the purchase or installation is repaid.

6 (7) TELECOMMUTING.—The term “telecommuting” means the use of  
7 telecommunications to perform work functions under circumstances  
8 that reduce or eliminate the need to commute.

9 (8) TELECOMMUTING PILOT PROGRAM.—The term “telecommuting  
10 pilot program” means the pilot program established under subsection  
11 (d).

12 (b) GOVERNMENTWIDE PROGRAM.—

13 (1) IN GENERAL.—The Administrator shall promulgate final rules  
14 establishing the Governmentwide program authorized under subsection  
15 (d) of section 337 of the Energy Policy and Conservation Act (42  
16 U.S.C. 6307) that ensure compliance with that subsection.

17 (2) ASSISTANCE.—The Administrator shall develop and coordinate a  
18 Governmentwide program, building on the Energy Star for Small Busi-  
19 ness program, to assist small business concerns in—

20 (A) becoming more energy efficient;

21 (B) understanding the cost savings from improved energy effi-  
22 ciency; and

23 (C) identifying financing options for energy efficiency upgrades.

24 (3) CONSULTATION AND COOPERATION.—The Governmentwide pro-  
25 gram shall be developed and coordinated—

26 (A) in consultation with the Secretary of Energy and the Ad-  
27 ministrator of the Environmental Protection Agency; and

28 (B) in cooperation with any entities that the Administrator con-  
29 siders appropriate, such as industry trade associations, industry  
30 members, and energy efficiency organizations.

31 (4) AVAILABILITY OF INFORMATION.—The Administrator shall make  
32 available the information and materials developed under the Govern-  
33 mentwide program to—

34 (A) small business concerns, including smaller design, engineer-  
35 ing, and construction firms; and

36 (B) other Federal programs for energy efficiency, such as the  
37 Energy Star for Small Business program.

38 (5) STRATEGY AND REPORT.—

39 (A) STRATEGY REQUIRED.—The Administrator shall develop a  
40 strategy to educate, encourage, and assist small business concerns  
41 in adopting energy efficient building fixtures and equipment.

1 (B) REPORT.—Not later than December 31, 2008, the Adminis-  
2 trator shall submit to Congress a report containing a plan to im-  
3 plement the strategy developed under subparagraph (A).

4 (c) EFFICIENCY PROGRAM.—

5 (1) AUTHORITY.—The Administrator shall establish a small business  
6 energy efficiency program to provide energy efficiency assistance to  
7 small business concerns through small business development centers.

8 (2) SMALL BUSINESS DEVELOPMENT CENTERS.—

9 (A) IN GENERAL.—In carrying out the efficiency program, the  
10 Administrator shall enter into agreements with small business de-  
11 velopment centers under which small business development centers  
12 shall—

13 (i) provide access to information and resources on energy  
14 efficiency practices, including on-bill financing options;

15 (ii) conduct training and educational activities;

16 (iii) offer confidential, free, one-on-one, in-depth energy au-  
17 dits to owners and operators of small business concerns re-  
18 garding energy efficiency practices;

19 (iv) give referrals to certified professionals and other pro-  
20 viders of energy efficiency assistance that meet such stand-  
21 ards for educational, technical, and professional competency  
22 as the Administrator shall establish;

23 (v) to the extent not inconsistent with controlling State  
24 public utility regulations, act as a facilitator between small  
25 business concerns, electric utilities, lenders, and the Adminis-  
26 trator to facilitate on-bill financing arrangements;

27 (vi) provide necessary support to small business concerns  
28 to—

29 (I) evaluate energy efficiency opportunities and oppor-  
30 tunities to design or construct high-performance green  
31 buildings;

32 (II) evaluate renewable energy sources, such as the  
33 use of solar and small wind energy to supplement power  
34 consumption;

35 (III) secure financing to achieve energy efficiency or  
36 to design or construct high-performance green buildings;  
37 and

38 (IV) implement energy efficiency projects;

39 (vii) assist owners and operators of small business concerns  
40 with the development and commercialization of clean tech-  
41 nology products, goods, services, and processes that use re-

1           newable energy sources, dramatically reduce the use of nat-  
2           ural resources, and cut or eliminate greenhouse gas emissions  
3           through—

4                     (I) technology assessment;

5                     (II) intellectual property;

6                     (III) small business innovation research submissions  
7                     under division H of subtitle II;

8                     (IV) strategic alliances;

9                     (V) business model development; and

10                    (VI) preparation for investors; and

11                    (viii) help small business concerns improve environmental  
12                    performance by shifting to less hazardous materials and re-  
13                    ducing waste and emissions, including by providing assistance  
14                    for small business concerns to adapt the materials they use,  
15                    the processes they operate, and the products and services they  
16                    produce.

17           (B) REPORTS.—A small business development center partici-  
18           pating in the efficiency program shall submit to the Administrator  
19           and the Administrator of the Environmental Protection Agency an  
20           annual report that includes—

21                    (i) a summary of the energy efficiency assistance provided  
22                    by the small business development center under the efficiency  
23                    program;

24                    (ii) the number of small business concerns assisted by the  
25                    small business development center under the efficiency pro-  
26                    gram;

27                    (iii) statistics on the total amount of energy saved as a re-  
28                    sult of assistance provided by that center under the efficiency  
29                    program; and

30                    (iv) any additional information that the Administrator, in  
31                    consultation with the Association, determines to be necessary.

32           (C) REPORTS TO CONGRESS.—Not later than 60 days after the  
33           date on which all reports under subparagraph (B) relating to a  
34           year are submitted, the Administrator shall submit to the Com-  
35           mittee on Small Business and Entrepreneurship of the Senate and  
36           the Committee on Small Business of the House of Representatives  
37           a report summarizing the information regarding the efficiency pro-  
38           gram submitted by small business development centers partici-  
39           pating in the efficiency program.

1 (3) ELIGIBILITY.—A small business development center shall be eli-  
2 gible to participate in the efficiency program only if the small business  
3 development center is accredited under section 27111(b) of this title.

4 (4) SELECTION OF PARTICIPATING STATE PROGRAMS.—From among  
5 small business development centers submitting applications to partici-  
6 pate in the efficiency program, the Administrator—

7 (A) shall, to the maximum extent practicable, select small busi-  
8 ness development centers in such a manner as to promote a na-  
9 tionwide distribution of small business development centers partici-  
10 pating in the efficiency program; and

11 (B) may not select more than one small business development  
12 center in a State to participate in the efficiency program.

13 (5) MATCHING REQUIREMENT.—Section 27102(g)(1) of this title  
14 shall apply to assistance made available under the efficiency program.

15 (6) GRANT AMOUNTS.—A small business development center selected  
16 to participate in the efficiency program under paragraph (4) shall be  
17 eligible to receive a grant in an amount equal to not less than  
18 \$100,000 nor more than \$300,000 in each fiscal year.

19 (7) EVALUATION AND REPORT.—The Comptroller General shall—

20 (A) not later than 30 months after the date of disbursement of  
21 the first grant under the efficiency program, initiate an evaluation  
22 of the efficiency program; and

23 (B) not later than 6 months after the date of the initiation of  
24 the evaluation under subparagraph (A), submit to the Adminis-  
25 trator, the Committee on Small Business and Entrepreneurship of  
26 the Senate, and the Committee on Small Business of the House  
27 of Representatives a report containing—

28 (i) the results of the evaluation; and

29 (ii) any recommendations regarding whether the efficiency  
30 program, with or without modification, should be extended to  
31 include the participation of all small business development  
32 centers.

33 (8) GUARANTEE.—To the extent not inconsistent with State law, the  
34 Administrator may guarantee the timely payment of a loan made to a  
35 small business concern through an on-bill financing agreement on such  
36 terms and conditions as the Administrator shall establish through a  
37 formal rulemaking, after providing notice and an opportunity for com-  
38 ment.

39 (9) IMPLEMENTATION.—Subject to amounts approved in advance in  
40 appropriations Acts and separate from amounts approved to carry out

1 section 27102(a) of this title, the Administrator may make grants or  
2 enter into cooperative agreements to carry out this subsection.

3 (10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
4 be appropriated such sums as are necessary to make grants and enter  
5 into cooperative agreements to carry out this subsection.

6 (11) TERMINATION.—The authority under this subsection shall ter-  
7minate 4 years after the date of disbursement of the first grant under  
8 the efficiency program.

9 (d) TELECOMMUTING PILOT PROGRAM.—

10 (1) IN GENERAL.—The Administrator shall conduct, in not more  
11 than 5 regions of the Administration, a pilot program to provide infor-  
12 mation regarding telecommuting to small business concerns and to en-  
13 courage small business concerns to offer telecommuting options to their  
14 employees.

15 (2) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In  
16 carrying out the telecommuting pilot program, the Administrator shall  
17 make a concerted effort to provide information to—

18 (A) small business concerns owned by or employing individuals  
19 with disabilities, particularly veterans who are individuals with dis-  
20 abilities;

21 (B) Federal, State, and local agencies having knowledge and ex-  
22 pertise in assisting individuals with disabilities, including veterans  
23 who are individuals with disabilities; and

24 (C) any group or organization the primary purpose of which is  
25 to aid individuals with disabilities or veterans who are individuals  
26 with disabilities.

27 (3) PERMISSIBLE ACTIVITIES.—In carrying out the telecommuting  
28 pilot program, the Administrator may—

29 (A) produce educational materials and conduct presentations de-  
30 signed to raise awareness in the small business community of the  
31 benefits and the ease of telecommuting;

32 (B)(i) conduct outreach to small business concerns that are con-  
33 sidering offering telecommuting options; and

34 (ii) conduct outreach as provided in paragraph (2); and

35 (C) acquire telecommuting technologies and equipment to be  
36 used for demonstration purposes.

37 (4) SELECTION OF REGIONS.—In determining which regions will par-  
38 ticipate in the telecommuting pilot program, the Administrator shall  
39 give priority consideration to regions in which Federal agencies and  
40 private-sector employers have demonstrated a strong regional commit-  
41 ment to telecommuting.

1 (5) REPORT.—Not later than 2 years after the date on which funds  
 2 are first appropriated to carry out this subsection, the Administrator  
 3 shall submit to the Committee on Small Business and Entrepreneurship  
 4 of the Senate and the Committee on Small Business of the House  
 5 of Representatives a report containing the results of an evaluation of  
 6 the telecommuting pilot program and any recommendations regarding  
 7 whether the pilot program, with or without modification, should be ex-  
 8 tended to include the participation of all regions of the Administration.

9 (6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
 10 be appropriated to the Administration \$5,000,000 to carry out this  
 11 subsection.

12 (7) TERMINATION.—The telecommuting pilot program shall termi-  
 13 nate 4 years after the date on which funds are first appropriated to  
 14 carry out this subsection.

15 **§ 45110. Information regarding, and marketing of, programs**  
 16 **for veterans and reservists**

17 (a) IN GENERAL.—The Administrator and the Secretary of Defense shall  
 18 develop a joint website and printed materials providing information regard-  
 19 ing any program for small business concerns that is available to veterans  
 20 or reservists.

21 (b) MARKETING.—The Administrator may—

22 (1) advertise and promote the program under section 21303 of this  
 23 title jointly with the Secretary of Defense and veterans' service organi-  
 24 zations; and

25 (2) advertise and promote participation by lenders in the program  
 26 jointly with trade associations for banks or other lending institutions.

27 **§ 45111. Outreach regarding health insurance options avail-**  
 28 **able to children**

29 (a) DEFINITIONS.—In this section:

30 (1) MEDICAID PROGRAM.—The term “Medicaid program” means the  
 31 program established under title XIX of the Social Security Act (42  
 32 U.S.C. 1396 et seq.).

33 (2) STATE.—The term “State” has the meaning given the term for  
 34 purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et  
 35 seq.).

36 (3) STATE CHILDREN’S HEALTH INSURANCE PROGRAM.—The term  
 37 “State children’s health insurance program” means the State children’s  
 38 health insurance program established under title XXI of the Social Se-  
 39 curity Act (42 U.S.C. 1397aa et seq.).

40 (4) TASK FORCE.—The term “task force” means the task force es-  
 41 tablished under subsection (b)(1).

1 (b) ESTABLISHMENT OF TASK FORCE.—

2 (1) ESTABLISHMENT.—There is established a task force to conduct  
3 a nationwide campaign of education and outreach for small business  
4 concerns regarding the availability of coverage for children through pri-  
5 vate insurance options, the Medicaid program, and the State children’s  
6 health insurance program.

7 (2) MEMBERSHIP.—The task force shall consist of the Adminis-  
8 trator, the Secretary of Health and Human Services, the Secretary of  
9 Labor, and the Secretary of the Treasury.

10 (3) RESPONSIBILITIES.—The campaign conducted under this sub-  
11 section shall include—

12 (A) efforts to educate the owners of small business concerns  
13 about the value of health coverage for children;

14 (B) information regarding options available to the owners and  
15 employees of small business concerns to make insurance more af-  
16 fordable, including Federal and State tax deductions and credits  
17 for health care-related expenses and health insurance expenses and  
18 Federal tax exclusion for health insurance options available under  
19 employer-sponsored cafeteria plans under section 125 of the Inter-  
20 nal Revenue Code of 1986 (26 U.S.C. 125);

21 (C) efforts to educate the owners of small business concerns  
22 about assistance available through public programs; and

23 (D) efforts to educate the owners and employees of small busi-  
24 ness concerns regarding the availability of the hotline operated as  
25 part of the Insure Kids Now program of the Department of  
26 Health and Human Services.

27 (4) IMPLEMENTATION.—In carrying out this subsection, the task  
28 force may—

29 (A) use any business partner of the Administration, including—

30 (i) a small business development center;

31 (ii) a certified development company;

32 (iii) a women’s business center; and

33 (iv) SCORE;

34 (B) enter into—

35 (i) a memorandum of understanding with a chamber of  
36 commerce; and

37 (ii) a partnership with any appropriate small business con-  
38 cern or health advocacy group; and

39 (C) designate outreach programs at regional offices of the De-  
40 partment of Health and Human Services to work with district of-  
41 fices of the Administration.



1 (5) WEBSITE.—The Administrator shall ensure that links to infor-  
 2 mation on the eligibility and enrollment requirements for the Medicaid  
 3 program and State children’s health insurance program of each State  
 4 are prominently displayed on the website of the Administration.

5 (6) REPORT.—

6 (A) IN GENERAL.—Not later than February 4, 2011, and every  
 7 2 years thereafter, the Administrator shall submit to the Com-  
 8 mittee on Small Business and Entrepreneurship of the Senate and  
 9 the Committee on Small Business of the House of Representatives  
 10 a report on the status of the nationwide campaign conducted  
 11 under paragraph (1).

12 (B) CONTENTS.—A report under subparagraph (A) shall in-  
 13 clude a status update on all efforts made to educate owners and  
 14 employees of small business concerns on options for providing  
 15 health insurance for children through public and private alter-  
 16 natives.

17 **SEC. 4. CONFORMING AMENDMENTS TO POSITIVE LAW PROVISIONS**  
 18 **OF THE UNITED STATES CODE.**

19 (a) TITLE 5.—Title 5, United States Code, is amended—

20 (1) in section 601(3), by striking “section 3 of the Small Business  
 21 Act” and inserting “section 10101 of title 53”; and

22 (2) in section 3703(e)(2)(A), by striking “section 3(a)(2) of the  
 23 Small Business Act” and inserting “section 10101 of title 53”.

24 (b) TITLE 10.—Title 10, United States Code, is amended—

25 (1) in section 144—

26 (A) in subsection (b), by striking “section 15(k) of the Small  
 27 Business Act (15 U.S.C. 644(k))” and inserting “section 25109  
 28 of title 53”; and

29 (B) in subsection (c)(2), by striking “Section 15(k) of the Small  
 30 Business Act (15 U.S.C. 644(k))” and inserting “Section 25109  
 31 of title 53”;

32 (2) in section 2225(f)—

33 (A) in paragraph (3), by striking “section 3(a) of the Small  
 34 Business Act (15 U.S.C. 632(a))” and inserting “section 10101  
 35 of title 53”;

36 (B) in paragraph (4), by striking “section 8(d)(3)(C) of the  
 37 Small Business Act (15 U.S.C. 637(d)(3)(C))” and inserting “sec-  
 38 tion 10101 of title 53”; and

39 (C) in paragraph (5), by striking “section 8(d)(3)(D) of the  
 40 Small Business Act (15 U.S.C. 637(d)(3)(D))” and inserting “sec-  
 41 tion 10101 of title 53”;

- 1 (3) in section 2302(2)—
- 2 (A) in subparagraph (D), by striking “section 15 of the Small  
3 Business Act (15 U.S.C. 644)” and inserting “chapter 251 of title  
4 53,”; and
- 5 (B) in subparagraph (E), by striking “section 9 of the Small  
6 Business Act (15 U.S.C. 638)” and inserting “chapters 261 and  
7 263 of title 53”;
- 8 (4) in section 2304—
- 9 (A) in subsection (b)(2), by striking “sections 9 and 15 of the  
10 Small Business Act (15 U.S.C. 638, 644)” and inserting “chap-  
11 ters 251, 261, and 263 of title 53”; and
- 12 (B) in subsection (f)(2)(D)(ii), by striking “section 8(a) of the  
13 Small Business Act (15 U.S.C. 637(a))” and inserting “chapters  
14 231 to 235 of title 53”;
- 15 (5) in subsections (c) and (f)(3) of section 2304b, by striking “sec-  
16 tion 8(e) of the Small Business Act (15 U.S.C. 637(e))” and inserting  
17 “section 24501 of title 53”;
- 18 (6) in section 2304c(a)(1), by striking “section 8(e) of the Small  
19 Business Act (15 U.S.C. 637(e))” and inserting “section 24501 of title  
20 53”;
- 21 (7) in section 2304e(b)(1), by striking “section 8 or 15 of the Small  
22 Business Act (15 U.S.C. 637 or 644)” and inserting “chapter 231,  
23 233, 235, 241, 243, 245, 247, 251, or 257 of title 53”;
- 24 (8) in section 2319—
- 25 (A) in subsection (c)(4), by striking “section 8(b)(7) of the  
26 Small Business Act (15 U.S.C. 637(b)(7))” and inserting “section  
27 24108 of title 53”; and
- 28 (B) in subsection (d)(2), by striking “section 3 of the Small  
29 Business Act (15 U.S.C. 632)” and inserting “section 10101 of  
30 title 53”;
- 31 (9) in section 2320(a)(2)—
- 32 (A) in subparagraph (A), by striking “section 9(j)(2) of the  
33 Small Business Act (15 U.S.C. 638(j)(2))” and inserting “para-  
34 graph (2)(E), (8), (9), (10), (11), (12), (13), or (14) of subsection  
35 (b) of section 26304 of title 53”; and
- 36 (B) in subparagraph (E)(i)—
- 37 (i) by striking “(15 U.S.C. 638 note)”; and
- 38 (ii) by striking “(15 U.S.C. 631)”;
- 39 (10) in section 2323—
- 40 (A) in subsection (a)—
- 41 (i) in paragraph (1)(A)—

1 (I) by striking “section 8(d) of the Small Business Act  
2 (15 U.S.C. 637(d))” and inserting “chapter 221 of title  
3 53,”; and

4 (II) by striking “section 3(p) of the Small Business  
5 Act” and inserting “section 10101 of title 53”; and

6 (ii) in paragraph (3), by striking “section 8(d)(4)(B) of the  
7 Small Business Act (15 U.S.C. 637(d)(4)(B))” and inserting  
8 “section 24303(b) of title 53”;

9 (B) in subsection (e)—

10 (i) in the first sentence of paragraph (3)(A), by striking  
11 “section 8(a) of the Small Business Act” and inserting  
12 “chapters 231 to 235 of title 53”; and

13 (ii) in paragraph (5)—

14 (I) in subparagraph (C)—

15 (aa) in clause (ii), by striking “section 8(a) of the  
16 Small Business Act (15 U.S.C. 637(a))” and insert-  
17 ing “chapters 231 to 235 of title 53”; and

18 (bb) in clause (iii), by striking “section 15(a) of  
19 the Small Business Act (15 U.S.C. 644(a))” and in-  
20 serting “section 25101 of title 53”;

21 (II) in subparagraph (E), by striking “under section  
22 8(a) of the Small Business Act (15 U.S.C. 637(a)) and  
23 under the small business set-aside program established  
24 under section 15(a) of the Small Business Act (15  
25 U.S.C. 644(a))” and inserting “under chapters 231 to  
26 235 of title 53 and under the small business set-aside  
27 program established under section 25101 of title 53”;  
28 and

29 (III) in subparagraph (F), by striking “section 8(a) of  
30 the Small Business Act (15 U.S.C. 637(a))” and insert-  
31 ing “chapters 231 to 235 of title 53”;

32 (C) in subsection (f)—

33 (i) in paragraph (1), by striking “section 3(p) of the Small  
34 Business Act” and inserting “section 10101 of title 53”; and

35 (ii) in paragraph (2), by striking “section 15(o)(1) of the  
36 Small Business Act (15 U.S.C. 644(o)(1))” and inserting  
37 “section 25113 of title 53”; and

38 (D) in subsection (h), by striking “section 8(d) of the Small  
39 Business Act (15 U.S.C. 637(d))” each place it appears and in-  
40 serting “chapter 243 of title 53”;

1 (11) in section 2323a, in the matter preceding paragraph (1), by  
2 striking “section 8(d) of the Small Business Act (15 U.S.C. 637(d))”  
3 and inserting “chapter 243 of title 53”;

4 (12) in section 2382(c)(4), by striking “section 3(a) of the Small  
5 Business Act (15 U.S.C. 632(a))” and inserting “section 10101 of title  
6 53”;

7 (13) in section 2410d(b)(1), by striking “section 8(d) of the Small  
8 Business Act (15 U.S.C. 637(d))” and inserting “chapter 243 of title  
9 53”;

10 (14) in section 2500, by striking paragraphs (11) and (12) and in-  
11 serting the following:

12 “(11) The term ‘Small Business Innovation Research Program’  
13 means the program established under section 10710(a), paragraphs (4)  
14 to (6) of section 26102, sections 26301 to 26304, section 26310, and  
15 section 26341 of title 53.

16 “(12) The term ‘Small Business Technology Transfer Program’  
17 means the program established under section 10710(a), paragraphs (4)  
18 to (6) of section 26102, and sections 26321 to 26323 of title 53.”;

19 (15) in section 2855(b)—

20 (A) in paragraph (1)(B), by striking “the Small Business Act  
21 (15 U.S.C. 631 et seq.)” and inserting “subtitle II of title 53”;  
22 and

23 (B) in paragraph (3), by striking “section 8(a) of the Small  
24 Business Act (15 U.S.C. 637(a))” and inserting “chapters 231 to  
25 235 of title 53”;

26 (16) in section 3024—

27 (A) in subsection (b), by striking “section 15(k) of the Small  
28 Business Act (15 U.S.C. 644(k))” and inserting “section 25109  
29 of title 53”; and

30 (B) in subsection (c)(2), by striking “Section 15(k) of the Small  
31 Business Act (15 U.S.C. 644(k))” and inserting “Section 25109  
32 of title 53”;

33 (17) in section 5028—

34 (A) in subsection (b), by striking “section 15(k) of the Small  
35 Business Act (15 U.S.C. 644(k))” and inserting “section 25109  
36 of title 53”; and

37 (B) in subsection (c)(2), by striking “Section 15(k) of the Small  
38 Business Act (15 U.S.C. 644(k))” and inserting “Section 25109  
39 of title 53”; and

40 (18) in section 8024—

1 (A) in subsection (b), by striking “section 15(k) of the Small  
2 Business Act (15 U.S.C. 644(k))” and inserting “section 25109  
3 of title 53”; and

4 (B) in subsection (c)(2), by striking “Section 15(k) of the Small  
5 Business Act (15 U.S.C. 644(k))” and inserting “Section 25109  
6 of title 53”.

7 (e) TITLE 11.—Title 11, United States Code, is amended—

8 (1) in section 109(b)(2), by striking “a New Markets Venture Cap-  
9 ital company as defined in section 351 of the Small Business Invest-  
10 ment Act of 1958, a small business investment company licensed by the  
11 Small Business Administration under subsection (c) or (d) of section  
12 301 of the Small Business Investment Act of 1958” and inserting “a  
13 new markets venture capital company (as defined in section 30501 of  
14 title 53), a small business investment company (as defined in section  
15 30501 of title 53)”; and

16 (2) in section 1102(a)(4), by striking “section 3(a)(1) of the Small  
17 Business Act” and inserting “subparagraphs (A) and (B) of section  
18 10101(70) of title 53”.

19 (d) TITLE 13.—Title 13, United States Code, is amended in section  
20 91(d)(4)(A) by striking “section 3(a) of the Small Business Act” and insert-  
21 ing “section 10101 of title 53”.

22 (e) TITLE 14.—Title 14, United States Code, is amended—

23 (1) in section 681(a), by striking “section 8(a) of the Small Business  
24 Act (15 U.S.C. 637(a))” and inserting “chapters 231 to 235 of title  
25 53”; and

26 (2) in section 687(g)(3), by striking “section 8(a) of the Small Busi-  
27 ness Act (15 U.S.C. 637(a))” and inserting “chapters 231 to 235 of  
28 title 53”.

29 (f) TITLE 18.—Title 18, United States Code, is amended—

30 (1) in section 20(5), by striking “section 103 of the Small Business  
31 Investment Act of 1958 (15 U.S.C. 662)” and inserting “section 30101  
32 of title 53”; and

33 (2) in section 1014, by striking “section 103 of the Small Business  
34 Investment Act of 1958 (15 U.S.C. 662)” and inserting “section 30101  
35 of title 53”.

36 (g) TITLE 23.—Title 23, United States Code, is amended in section  
37 505(b)(3) by striking “section 9 of the Small Business Act (15 U.S.C.  
38 638)” and inserting “chapters 261 and 263 of title 53”.

39 (h) TITLE 31.—Title 31, United States Code, is amended—

1 (1) in section 3554(c)(2), by striking “(within the meaning of section  
2 3(a) of the Small Business Act)” and inserting “(as defined in section  
3 10101 of title 53)”;

4 (2) in section 3718(b)—

5 (A) in paragraph (1)(B), by striking “(as defined in section 3(p)  
6 of the Small Business Act)” and inserting “(as defined in section  
7 10101 of title 53)”;

8 (B) by striking paragraph (3) and inserting the following:

9 “(3) Each agency shall use its best efforts to assure that not less  
10 than 10 percent of the amounts of all claims referred to private counsel  
11 by that agency under paragraph (2) are referred to law firms owned  
12 and controlled by socially and economically disadvantaged individuals  
13 and law firms that are qualified HUBZone small business concerns.  
14 For purposes of this paragraph—

15 “(A) the term ‘law firm owned and controlled by socially and  
16 economically disadvantaged individuals’ means a law firm that  
17 meets the requirements set forth in clauses (i) and (ii) of section  
18 10101(72)(A) of title 53 and regulations issued under those  
19 clauses;

20 “(B) ‘socially and economically disadvantaged individuals’ shall  
21 be presumed to include the groups and individuals described in  
22 subclause (1)(B) of the contract clause described in section  
23 24301(c) of title 53; and

24 “(C) the term ‘qualified HUBZone small business concern’ has  
25 the meaning given the term in section 10101 of title 53.”; and

26 (3) in section 6701(f)(3)—

27 (A) in subparagraph (A), by striking “section 3 of the Small  
28 Business Act” and inserting “section 10101 of title 53”;

29 (B) in subparagraph (B), by striking “has the meaning such  
30 term has under section 8(d) of the Small Business Act and rel-  
31 evant subcontracting regulations promulgated pursuant to that  
32 section” and inserting “has the meaning that the term has for  
33 purposes of chapter 243 of title 53 (including relevant regulations  
34 promulgated under that chapter)”;

35 (C) in subparagraph (C), by striking “section 3(p) of the Small  
36 Business Act (15 U.S.C. 632(o))” and inserting “section 10101 of  
37 title 53”.

38 (i) TITLE 35.—Title 35, United States Code, is amended—

39 (1) in section 41(h)(1), by striking “as defined under section 3 of  
40 the Small Business Act” and inserting “(as defined in section 10101  
41 of title 53)”;

1           (2) in section 201(h), by striking “as defined at section 2 of Public  
2           Law 85–536 (15 U.S.C. 632)” and inserting “as defined in section  
3           10101 of title 53”.

4           (j) TITLE 38.—Title 38, United States Code, is amended—

5           (1) in section 3117(b)(1), by striking “section 8 of the Small Busi-  
6           ness Act (15 U.S.C. 633(b))” and inserting “section 10321(o) of title  
7           53”;

8           (2) in section 3452—

9           (A) in the third sentence of subsection (b), by striking “section  
10           7(i)(1) of the Small Business Act (15 U.S.C. 636(i)(1))” and in-  
11           serting “section 20504 of title 53”;

12           (B) in subsection (h)—

13           (i) in paragraph (1), by striking “section 21 of the Small  
14           Business Act (15 U.S.C. 648)” and inserting “chapter 271  
15           of title 53”; and

16           (ii) in paragraph (2), by striking “section 33 of the Small  
17           Business Act (15 U.S.C. 657c)” and inserting “section  
18           27514 of title 53”; and

19           (C) in paragraphs (1) and (2) of section 3742(d), by striking  
20           “the Small Business Act (15 U.S.C. 631 et seq.)” and inserting  
21           “subtitle II of title 53”; and

22           (3) in section 3675(e)(2), by striking “(as defined pursuant to sec-  
23           tion 3(a) of the Small Business Act (15 U.S.C. 632(a)))” and inserting  
24           “(as defined in section 10101 of title 53)”.

25           (k) TITLE 39.—Section 3641(h) of title 39, United States Code, is  
26           amended by striking “section 3 of the Small Business Act” and inserting  
27           “section 10101 of title 53”.

28           (l) TITLE 44.—Title 44, United States Code, is amended—

29           (1) in subsections (c)(4) and (i)(1) of section 3506, by striking “sec-  
30           tion 3 of the Small Business Act (15 U.S.C. 632)” and inserting “sec-  
31           tion 10101 of title 53”; and

32           (2) in section 3520—

33           (A) in subsections (c)(2) and (h), by striking “section 3 of the  
34           Small Business Act (15 U.S.C. 632)” and inserting “section  
35           10101 of title 53”; and

36           (B) in subsections (e)(3) and (f)(3), by striking “section 30(b)  
37           of the Small Business Act (15 U.S.C. 657(b))” and inserting “sec-  
38           tion 10312(b) of title 53”.

39           (m) TITLE 46.—Section 54101(h)(1) of title 46, United States Code, is  
40           amended by striking “(within the meaning of section 3 of the Small Busi-

ness Act (15 U.S.C. 632))” and inserting “(as defined in section 10101 of title 53)”.

(n) TITLE 49.—Title 49, United States Code, is amended—

(1) in section 13709(h)(1)(A), by striking “small-business concern under the Small Business Act (15 U.S.C. 631 et seq.)” and inserting “small business concern under subtitles I and II of title 53”;

(2) in section 40110(d)(2)(D), by striking “The Small Business Act (15 U.S.C. 631 et seq.)” and inserting “Subtitles I and II of title 53”;

(3) in section 46301(i), by striking “section 3 of the Small Business Act (15 U.S.C. 632)” and inserting “section 10101 of title 53”;

(4) in paragraphs (2), (4)(B), and (6) of section 47107(e), by striking “(as defined in section 3(p) of the Small Business Act)” and inserting “(as defined in section 10101 of title 53)”; and

(5) in section 47113(a)—

(A) in paragraph (1)(A), by striking “section 3 of the Small Business Act (15 U.S.C. 632)” and inserting “section 10101 of title 53”;

(B) in paragraph (2), by striking “in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d)” and inserting “for purposes of chapter 221 of title 53 (including relevant subcontracting regulations prescribed under that chapter)”; and

(C) in paragraph (3), by striking “section 3(p) of the Small Business Act (15 U.S.C. 632(o))” and inserting “section 10101 of title 53”.

**SEC. 5. CONFORMING AMENDMENTS TO NON-POSITIVE LAW PROVISIONS OF THE UNITED STATES CODE.**

(a) TITLE 6.—

(1) Section 853(c) of the Homeland Security Act of 2002 (6 U.S.C. 423(c)) is amended by striking “section 15(j) of the Small Business Act (15 U.S.C. 644(j))” and inserting “section 25108 of title 53, United States Code.”.

(2) Section 856(b) of the Homeland Security Act of 2002 (6 U.S.C. 426(b)) is amended by striking “Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A))” and inserting “sections 23305(a)(2) and 25303(3) of title 53, United States Code.”.

(b) TITLE 7.—

(1) Section 623(a) of the Agricultural Credit Act of 1987 (7 U.S.C. 1985 note, Public Law 100–233) is amended by striking “section



1 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5))” and insert-  
2 ing “section 10101 of title 53, United States Code,”.

3 (2) Section 352 of the Consolidated Farm and Rural Development  
4 Act (7 U.S.C. 2000) is amended—

5 (A) in subsection (a)(3), by striking “the Small Business Act  
6 (15 U.S.C. 631 et seq.)” and inserting “subtitle II of title 53,  
7 United States Code,”; and

8 (B) in subsection (b)(1)(B), by striking “the Small Business  
9 Act (15 U.S.C. 631 et seq.)” and inserting “subtitle II of title 53,  
10 United States Code”.

11 (3) Section 1462(b) of the National Agricultural Research, Exten-  
12 sion, and Teaching Policy Act of 1977 (7 U.S.C. 3310(b)) is amended  
13 by striking “section 9 of the Small Business Act (15 U.S.C. 638)” and  
14 inserting “chapters 261 and 263 of title 53, United States Code”.

15 (4) Section 203(f)(4)(B) of the Agricultural Trade Act of 1978 (7  
16 U.S.C. 5623(f)(4)(B)) is amended by striking “small-business concern  
17 described in section 3(a) of the Small Business Act (15 U.S.C.  
18 632(a))” and inserting “small business concern (as defined in section  
19 10101 of title 53, United States Code)”.

20 (5) Section 1670(a)(5) of the Food, Agriculture, Conservation, and  
21 Trade Act of 1990 (7 U.S.C. 5923(a)(5)) is amended by striking “the  
22 term ‘small-business concern’ by section 3(a) of the Small Business  
23 Act” and inserting “the term ‘small business concern’ in section 10101  
24 of title 53, United States Code”.

25 (6) Section 404(d)(3) of the Agricultural Research, Extension, and  
26 Education Reform Act of 1998 (7 U.S.C. 7624(d)(3)) is amended by  
27 striking “section 9 of the Small Business Act (15 U.S.C. 638)” and  
28 inserting “chapters 261 and 263 of title 53, United States Code”.

29 (e) TITLE 10.—

30 (1) Section 817(a)(2)(D)(ii) of the National Defense Authorization  
31 Act for Fiscal Year 2006 (10 U.S.C. 2302 note, Public Law 109–163)  
32 is amended by striking “section 8(a) of the Small Business Act (15  
33 U.S.C. 637(a))” and inserting “chapters 231 to 235 of title 53, United  
34 States Code”.

35 (2) Section 853(e) of the National Defense Authorization Act for  
36 Fiscal Year 2004 (10 U.S.C. 2302 note, Public Law 108–136) is  
37 amended by striking “section 15(g)(1) of the Small Business Act (15  
38 U.S.C. 644(g)(1))” and inserting “section 25106(a) of title 53, United  
39 States Code”.

40 (3) Section 812(e) of the National Defense Authorization Act for  
41 Fiscal Year 2000 (10 U.S.C. 2302 note, Public Law 106–65) is

1 amended by striking “the same meaning as the meaning of such term  
2 as used in the Small Business Act (15 U.S.C. 631 et seq.)” and insert-  
3 ing “the meaning given the term ‘small business concern’ in section  
4 10101 of title 53, United States Code”.

5 (4) Section 831 of the National Defense Authorization Act for Fiscal  
6 Year 1991 (10 U.S.C. 2302 note, Public Law 101–510) is amended—

7 (A) in subsection (f)(7)(A), by striking “section 21 of the Small  
8 Business Act (15 U.S.C. 648)” and inserting “chapter 271 of title  
9 53, United States Code”;

10 (B) in subsection (h)—

11 (i) in paragraph (1), by striking “the Small Business Act”  
12 and inserting “subtitles I and II of title 53, United States  
13 Code”; and

14 (ii) in paragraph (2)—

15 (I) by striking “section 8 of the Small Business Act  
16 (15 U.S.C. 637)” and inserting “chapters 231 to 235 of  
17 title 53, United States Code”; and

18 (II) by striking “the Small Business Act” and insert-  
19 ing “subtitle I or II of title 53, United States Code”;

20 (C) in subsection (k), by striking “section 8(d) of the Small  
21 Business Act (15 U.S.C. 637(d))” and inserting “chapter 243 of  
22 title 53, United States Code,”; and

23 (D) in subsection (m)—

24 (i) in paragraph (1), by striking “section 3(a) of the Small  
25 Business Act (15 U.S.C. 632(a))” and inserting “section  
26 10101(70) of title 53, United States Code,”;

27 (ii) in paragraph (2)—

28 (I) in subparagraph (B), by striking “section 8(a)(13)  
29 of the Small Business Act (15 U.S.C. 637(a)(13))” and  
30 inserting “section 23101 of title 53, United States  
31 Code,”;

32 (II) in subparagraph (C), by striking “section 8(a)(15)  
33 of the Small Business Act (15 U.S.C. 637(a)(15))” and  
34 inserting “section 10101 of title 53, United States  
35 Code”;

36 (III) in subparagraph (E), by striking “section  
37 8(d)(3)(D) of the Small Business Act (15 U.S.C.  
38 637(d)(3)(D))” and inserting “section 10101 of title 53,  
39 United States Code”;

1 (IV) in subparagraph (F), by striking “section 8(d)(3)  
2 of the Small Business Act” and inserting “section 10101  
3 of title 53, United States Code”; and

4 (V) in subparagraph (G), by striking “section 3(p) of  
5 the Small Business Act” and inserting “section 10101 of  
6 title 53, United States Code”;

7 (iii) in paragraph (3), by striking “in section 8(d)(3)(C) of  
8 the Small Business Act (15 U.S.C. 637(d)(3)(C))” and in-  
9 serting “for purposes of chapter 243 of title 53, United  
10 States Code”; and

11 (iv) in paragraph (6), by striking “section 8(d) of the  
12 Small Business Act (15 U.S.C. 637(d))” and inserting “chap-  
13 ter 221 of title 53, United States Code”.

14 (5) Section 2723(c) of Public Law 98–369 (10 U.S.C. 2304 note)  
15 is amended by striking “section 8(a) of the Small Business Act (15  
16 U.S.C. 637(a))” and inserting “chapters 231 to 235 of title 53, United  
17 States Code”.

18 (6) Section 8025(b) of the Department of Defense Appropriations  
19 Act, 2004 (10 U.S.C. 2410d note, Public Law 108–87), is amended by  
20 striking “section 8(d) of the Small Business Act (15 U.S.C. 637(d))”  
21 and inserting “chapter 243 of title 53, United States Code,”.

22 (7) Section 2912(b) of the National Defense Authorization Act for  
23 Fiscal Year 1994 (10 U.S.C. 2687 note, Public Law 103–160) is  
24 amended—

25 (A) in paragraph (1), by striking “means a business concern  
26 meeting the requirements of section 3 of the Small Business Act  
27 (15 U.S.C. 632)” and inserting “has the meaning given the term  
28 in section 10101 of title 53, United States Code”; and

29 (B) in paragraph (2), by striking “the business concerns re-  
30 ferred to in section 8(d)(1) of such Act” and inserting “a qualified  
31 HUBZone small business concern, small business concern owned  
32 and operated by service-disabled veterans, small business concern  
33 owned and operated by socially and economically disadvantaged in-  
34 dividuals, small business concern owned and operated by veterans,  
35 small business concern owned and operated by women, or other  
36 small business concern (as those terms are defined in section  
37 10101 of title 53, United States Code)”.

38 (d) TITLE 12.—

39 (1) Section 2(b)(1) of the Export-Import Bank Act of 1945 (12  
40 U.S.C. 635(b)(1)) is amended—

41 (A) in subparagraph (E)—

1 (i) in clause (iii)(II), by striking “socially and economically  
2 disadvantaged small business concerns (as defined in section  
3 8(a)(4) of the Small Business Act), small business concerns  
4 (as defined in section 3(a) of the Small Business Act) owned  
5 by women, and small business concerns (as defined in section  
6 3(a) of the Small Business Act)” and inserting “small busi-  
7 ness concerns owned and controlled by socially and economi-  
8 cally disadvantaged individuals (as defined in section 10101  
9 of title 53, United States Code), small business concerns (as  
10 defined in section 10101 of title 53, United States Code)  
11 owned by women, and other small business concerns (as de-  
12 fined in section 10101 of title 53, United States Code),”;

13 (ii) in clause (v), by striking “(as defined under section 3  
14 of the Small Business Act)” and inserting “(as defined in sec-  
15 tion 10101 of title 53, United States Code),”; and

16 (iii) in clause (vii)(I), by striking “section 103 of the Small  
17 Business Investment Act of 1958” and inserting “section  
18 30101 of title 53, United States Code,”; and

19 (B) in subparagraph (H)(iii), by striking “(as such term is de-  
20 fined in section 3 of the Small Business Act)” and inserting “(as  
21 defined in section 10101 of title 53, United States Code),”.

22 (2) Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C.  
23 635g) is amended—

24 (A) in subsection (c), by striking “(as defined in section 3(a)  
25 of the Small Business Act)” and inserting “(as defined in section  
26 10101 of title 53, United States Code),”;

27 (B) in subsection (d), by striking “(as defined in section 3(a)  
28 of the Small Business Act)” and inserting “(as defined in section  
29 10101 of title 53, United States Code),”; and

30 (C) in subsection (e), by striking “socially and economically dis-  
31 advantaged small business concerns (as defined in section 8(a)(4)  
32 of the Small Business Act), small business concerns (as defined  
33 in section 3(a) of the Small Business Act) owned by women, and  
34 small business concerns (as defined in section 3(a) of the Small  
35 Business Act)” and inserting “small business concerns owned and  
36 controlled by socially and economically disadvantaged individuals  
37 (as defined in section 10101 of title 53, United States Code),  
38 small business concerns (as defined in section 10101 of title 53,  
39 United States Code) owned by women, and other small business  
40 concerns (as defined in section 10101 of title 53, United States  
41 Code)”.

1 (3) Section 11(h) of the Federal Home Loan Bank Act (12 U.S.C.  
2 1431(h)) is amended by striking “formed pursuant to section 301 of  
3 the Small Business Investment Act of 1958” and inserting “(as defined  
4 in section 30301 of title 53, United States Code)”.

5 (4) Section 21A(b)(13) of the Federal Home Loan Bank Act (12  
6 U.S.C. 1441a(b)(13)) is amended by striking “(as defined in section  
7 3(p) of the Small Business Act)” and inserting “(as defined in section  
8 10101 of title 53, United States Code)”.

9 (5) Section 5(c)(4) of the Home Owners’ Loan Act (12 U.S.C.  
10 1464(c)(4)) is amended—

11 (A) in subparagraph (D), by striking “small business invest-  
12 ment company formed pursuant to section 301(d) of the Small  
13 Business Investment Act of 1958” and inserting “specialized small  
14 business investment company (as defined in section 30301 of title  
15 53, United States Code)”; and

16 (B) in subparagraph (F), by striking “New Markets Venture  
17 Capital company as defined in section 351 of the Small Business  
18 Investment Act of 1958” and inserting “new markets venture  
19 company (as defined in section 30301 of title 53, United States  
20 Code)”.

21 (6) Section 951(c)(3) of the Financial Institutions Reform, Recovery,  
22 and Enforcement Act of 1989 (12 U.S.C. 1833a(c)(3)) is amended by  
23 striking “section 16(a) of the Small Business Act (15 U.S.C. 645(a))”  
24 and inserting “section 10501 of title 53, United States Code”.

25 (7) Section 208(i)(8) of the Small Business Loan Securitization and  
26 Secondary Market Enhancement Act of 1994 (12 U.S.C. 1835(i)(8))  
27 is amended by striking “section 3(a) of the Small Business Act” and  
28 inserting “section 10101 of title 53, United States Code”.

29 (8) Section 103(b)(1)(A) of the National Consumer Cooperative  
30 Bank Act (12 U.S.C. 3013(b)(1)(A)) is amended by striking “section  
31 3 of the Small Business Act” and inserting “section 10101 of title 53,  
32 United States Code”.

33 (9) Section 103(6) of the Community Development Banking and Fi-  
34 nancial Institutions Act of 1994 (12 U.S.C. 4702(6)) is amended by  
35 striking “the Small Business Investment Act of 1958” and inserting  
36 “subtitle III of title 53, United States Code”.

37 (e) TITLE 15.—

38 (1) Section 3(e) of the Securities Act of 1933 (15 U.S.C. 77c(e)) is  
39 amended by striking “the Small Business Investment Act of 1958” and  
40 inserting “subtitle III of title 53, United States Code,”.

1           (2) Section 304(e) of the Trust Indenture Act of 1939 (15 U.S.C.  
2 77ddd(e)) is amended by striking “the Small Business Investment Act  
3 of 1958” and inserting “subtitle III of title 53, United States Code,”.

4           (3) Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
5 78c(a)) is amended—

6                 (A) in paragraph (53)(B)(ii), by striking “section 3(a) of the  
7 Small Business Act” and inserting “section 10101 of title 53,  
8 United States Code”; and

9                 (B) in paragraph (54)(A)(iv), by striking “licensed by the  
10 United States Small Business Administration under section 301(c)  
11 or (d) of the Small Business Investment Act of 1958” and insert-  
12 ing “(as defined in section 30101 of title 53, United States  
13 Code)”.

14           (4) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C.  
15 80a-2(a)) is amended—

16                 (A) in paragraph (46)(B), by striking “the Small Business In-  
17 vestment Act of 1958” and inserting “subtitle III of title 53,  
18 United States Code,”; and

19                 (B) in paragraph (47)(C), by striking “the Small Business In-  
20 vestment Act of 1958” and inserting “subtitle III of title 53,  
21 United States Code”.

22           (5) Section 18(k) of the Investment Company Act of 1940 (15  
23 U.S.C. 80a-18(k)) is amended by striking “the Small Business Invest-  
24 ment Act of 1958” and inserting “subtitle III of title 53, United States  
25 Code”.

26           (6) Section 61(a)(4) of the Investment Company Act of 1940 (15  
27 U.S.C. 80a-60(a)(4)) is amended by striking “the Small Business In-  
28 vestment Act of 1958” and inserting “subtitle III of title 53, United  
29 States Code,”.

30           (7) Section 234 of the Disaster Relief Act of 1970 (15 U.S.C. 636b)  
31 is amended in the second sentence by striking “sections 231, 232,  
32 236(b) and 237” and inserting “section 236(b)”.

33           (8) Section 235 of the Disaster Relief Act of 1970 (15 U.S.C. 636c)  
34 is amended by striking “section 231, 232, or 233” and inserting “sec-  
35 tion 233”.

36           (9) Section 237(a) of the Disaster Relief Act of 1970 (15 U.S.C.  
37 636d(a)) is amended in the first sentence by striking “The Small Busi-  
38 ness Administration in the case of a nonagricultural enterprise, and the  
39 Farmers Home Administration in the case of an agricultural enter-  
40 prise, are authorized to provide any industrial, commercial, agricul-

1           tural, or other enterprise, which” and inserting “The Secretary of Agri-  
2           culture may provide an agricultural enterprise that”.

3           (10) Section 704(a)(9) of the Consumer Credit Protection Act (15  
4           U.S.C. 1691e(a)(9)) is amended by striking “The Small Business In-  
5           vestment Act of 1958” and inserting “subtitle III of title 53, United  
6           States Code”.

7           (f) TITLE 16.—

8           (1) Section 14(i)(1) of the National Forest Management Act of 1976  
9           (16 U.S.C. 472a(i)(1)) is amended by striking “the Small Business  
10          Act, as amended” and inserting “subtitles I and II of title 53, United  
11          States Code”.

12          (2) Section 329(c)(1) of the Department of the Interior and Related  
13          Agencies Appropriations Act, 1999 (16 U.S.C. 535a(c)(1)), is amended  
14          by striking “the Small Business Act (15 U.S.C. 631 et seq.)” and in-  
15          serting “subtitles I and II of title 53, United States Code”.

16          (3) Section 705(f) of the Alaska National Interest Lands Conserva-  
17          tion Act (16 U.S.C. 539d(f)) is amended by striking “the Small Busi-  
18          ness Act as amended (15 U.S.C. 631 et seq.)” and inserting “subtitles  
19          I and II of title 53, United States Code”.

20          (g) TITLE 19.—

21          (1) Section 254(e) of the Trade Act of 1974 (19 U.S.C. 2344(e))  
22          is amended by “striking section 7(a) of the Small Business Act” and  
23          inserting “division B of subtitle II of title 53, United States Code”.

24          (2) Section 255(d)(1) of the Trade Act of 1974 (19 U.S.C.  
25          2345(d)(1)) is amended by striking “the Small Business Act” and in-  
26          serting “subtitles I and II of title 53, United States Code,”.

27          (3) Section 256(a) of the Trade Act of 1974 (19 U.S.C. 2346(a))  
28          is amended by striking “the Small Business Act” and inserting “sub-  
29          titles I and II of title 53, United States Code”.

30          (h) TITLE 20.—Section 142 of the Higher Education Act of 1965 (20  
31          U.S.C. 1018a) is amended—

32          (1) in subsection (d)(2)(A), by striking “subsections (e), (f), and (g)  
33          of section 8 of the Small Business Act (15 U.S.C. 637)” and inserting  
34          “section 24501 of title 53, United States Code”;

35          (2) in subsection (g)(6), by striking “section 8(h) of the Small Busi-  
36          ness Act (15 U.S.C. 637(h))” and inserting “section 24701 of title 53,  
37          United States Code,”; and

38          (3) in subsection (h)(1)(B), by striking “section 15(a) of the Small  
39          Business Act (15 U.S.C. 644(a))” and inserting “section 25101 of title  
40          53, United States Code”.

1 (i) TITLE 22.—Section 310(c)(1) of the Chemical Weapons Convention  
2 Implementation Act of 1998 (22 U.S.C. 6729(c)(1)) is amended by striking  
3 “section 3 of the Small Business Act” and inserting “section 10101 of title  
4 53, United States Code”.

5 (j) TITLE 23.—

6 (1) Section 1101(b)(1) of the Safe, Accountable, Flexible, Efficient  
7 Transportation Equity Act: A Legacy for Users (23 U.S.C. 101 note,  
8 Public Law 109–59) is amended—

9 (A) in subparagraph (A), by striking “section 3 of the Small  
10 Business Act (15 U.S.C. 632)” and inserting “section 10101 of  
11 title 53, United States Code”; and

12 (B) in subparagraph (B), by striking “section 8(d) of the Small  
13 Business Act (15 U.S.C. 637(d))” and inserting “chapter 243 of  
14 title 53, United States Code,”.

15 (2) Section 1101(b) of the Transportation Equity Act for the 21st  
16 Century (23 U.S.C. 101 note, Public Law 105–178) is amended—

17 (A) in subparagraph (A), by striking “section 3 of the Small  
18 Business Act (15 U.S.C. 632)” and inserting “section 10101 of  
19 title 53, United States Code”; and

20 (B) in subparagraph (B), by striking “section 8(d) of the Small  
21 Business Act (15 U.S.C. 637(d))” and inserting “chapter 243 of  
22 title 53, United States Code,”.

23 (k) TITLE 25.—

24 (1) Section 105(a)(3)(C)(ii)(X) of the Indian Self-Determination Act  
25 (25 U.S.C. 450j(a)(3)(C)(ii)(X)) is amended by striking “The Small  
26 Business Act (15 U.S.C. 631 et seq.)” and inserting “Subtitles I and  
27 II of title 53, United States Code”.

28 (2) Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)  
29 is amended in subsections (h) and (i) by striking “section 410 of the  
30 Small Business Investment Act of 1958, as amended (15 U.S.C. 661,  
31 694a)” and inserting “section 32101 of title 53, United States Code”.

32 (3) Section 218(b)(1) of the Indian Financing Act of 1974 (25  
33 U.S.C. 1497a(b)(1)) is amended by striking “section 411 of the Small  
34 Business Investment Act of 1958, as amended (15 U.S.C. 661, 694b)”  
35 and inserting “section 32102 of title 53, United States Code”.

36 (l) TITLE 29.—Section 211 of the Assistive Technology Act of 1998 (29  
37 U.S.C. 3031) is amended—

38 (1) in subsection (a), by striking “small-business concern, as de-  
39 scribed in section 3(a) of the Small Business Act (15 U.S.C. 632(a))”  
40 and inserting “small business concern (as defined in section 10101 of  
41 title 53, United States Code)”; and



1 (2) in subsection (b)—

2 (A) in the first sentence, by striking “section 9(g) of the Small  
3 Business Act (15 U.S.C. 638(g))” and inserting “section 26302  
4 of title 53, United States Code”; and

5 (B) in the second sentence, by striking “section 9(f) of such Act  
6 (15 U.S.C. 638(g))” and inserting “section 26301 of title 53,  
7 United States Code”.

8 (m) TITLE 26.—

9 (1) Section 243(a)(2) of the Internal Revenue Code of 1986 (26  
10 U.S.C. 243(a)(2)) is amended by striking “the Small Business Invest-  
11 ment Act of 1958 (15 U.S.C. 661 and following)” and inserting “sub-  
12 title III of title 53, United States Code”.

13 (2) Section 246A(b)(2) of the Internal Revenue Code of 1986 (26  
14 U.S.C. 246A(b)(2)) is amended by striking “the Small Business Invest-  
15 ment Act of 1958” and inserting “subtitle III of title 53, United States  
16 Code”.

17 (3) Section 514(c)(6)(A)(ii) of the Internal Revenue Code of 1986  
18 (26 U.S.C. 514(c)(6)(A)(ii)) is amended—

19 (A) in the matter preceding subclause (I), by striking “the  
20 Small Business Investment Act of 1958” and inserting “subtitle  
21 III of title 53, United States Code,”; and

22 (B) in subclause (I), by striking “section 303(a) of such Act”  
23 and inserting “section 30304 of that title”.

24 (4) Section 542(c)(8) of the Internal Revenue Code of 1986 (26  
25 U.S.C. 542(c)(8)) is amended by striking “the Small Business Invest-  
26 ment Act of 1958 (15 U.S.C. 661 and following)” and inserting “sub-  
27 title III of title 53, United States Code,”.

28 (5) Section 582(c)(2)(A)(iii) of the Internal Revenue Code of 1986  
29 (26 U.S.C. 582(c)(2)(A)(iii)) is amended by striking “the Small Busi-  
30 ness Investment Act of 1958” and inserting “subtitle III of title 53,  
31 United States Code”.

32 (6) Section 1242(1) of the Internal Revenue Code of 1986 (26  
33 U.S.C. 1242(1)) is amended by striking “the Small Business Invest-  
34 ment Act of 1958” and inserting “subtitle III of title 53, United States  
35 Code”.

36 (7) Section 1243 of the Internal Revenue Code of 1986 (26 U.S.C.  
37 1243) is amended—

38 (A) in the matter preceding paragraph (1), by striking “the  
39 Small Business Investment Act of 1958” and inserting “subtitle  
40 III of title 53, United States Code”; and

1 (B) in paragraph (1), by striking “section 304 of the Small  
2 Business Act of 1958” and inserting “section 30305 of title 53,  
3 United States Code”.

4 (n) TITLE 33.—Section 5(b)(3)(A) of the Act of August 18, 1941 (33  
5 U.S.C. 701n(b)(3)(A)), is amended by striking “section 7(b)(2) of the Small  
6 Business Act” and inserting “section 21302 of title 53, United States  
7 Code”.

8 (o) TITLE 41.—

9 (1) Section 303 of the Federal Property and Administrative Services  
10 Act of 1949 (41 U.S.C. 253) is amended—

11 (A) in subsection (b)(2), by striking “sections 9 and 15 of the  
12 Small Business Act” and inserting “chapters 251, 261, and 263  
13 of title 53, United States Code”; and

14 (B) in subsection (f)(2)(D), by striking “section 8(a) of the  
15 Small Business Act” and inserting “chapters 231 to 235 of title  
16 53, United States Code”.

17 (2) Section 303C of the Federal Property and Administrative Serv-  
18 ices Act (41 U.S.C. 253c) is amended—

19 (A) in subsection (c)(5), by striking “section 8(b)(7) of the  
20 Small Business Act” and inserting “section 24108 of title 53,  
21 United States Code,”.

22 (B) in subsection (d)(2), by striking “section 3 of the Small  
23 Business Act” and inserting “section 10101 of title 53, United  
24 States Code”.

25 (3) Section 303I of the Federal Property and Administrative Serv-  
26 ices Act of 1949 (41 U.S.C. 253i) is amended—

27 (A) in subsection (c), by striking “section 8(e) of the Small  
28 Business Act (15 U.S.C. 637(e))” and inserting “section 24501 of  
29 title 53, United States Code,”; and

30 (B) in subsection (f)(3), by striking “section 8(e) of the Small  
31 Business Act (15 U.S.C. 637(e))” and inserting “section 24501 of  
32 title 53, United States Code”.

33 (4) Section 303J(a)(1) of the Federal Property and Administrative  
34 Services Act of 1949 (41 U.S.C. 253j(a)(1)) is amended by striking  
35 “section 8(e) of the Small Business Act (15 U.S.C. 637(e))” and in-  
36 serting “section 24501 of title 53, United States Code”.

37 (5) Section 309(b) of the Federal Property and Administrative Serv-  
38 ices Act of 1949 (41 U.S.C. 259(b)) is amended—

39 (A) in paragraph (4), by striking “section 15 of the Small Busi-  
40 ness Act” and inserting “chapter 251 of title 53, United States  
41 Code,”; and

1 (B) in paragraph (5), by striking “section 9 of the Small Busi-  
2 ness Act” and inserting “chapters 261 and 263 of title 53, United  
3 States Code”.

4 (6) Section 8304(4) of the Federal Acquisition Streamlining Act of  
5 1964 (41 U.S.C. 264 note, Public Law 103–355) is amended by strik-  
6 ing “subsections (a) and (d) of section 8 of the Small Business Act  
7 (15 U.S.C. 637 (a) and (d))” and inserting “chapters 231 to 235 and  
8 243 of title 53, United States Code”.

9 (7) Section 6(d) of the Office of Federal Procurement Policy Act (41  
10 U.S.C. 405(d)) is amended in paragraphs (11) and (12) by striking  
11 “(as defined in section 3(p) of the Small Business Act)” and inserting  
12 “(as defined in section 10101 of title 53, United States Code)”.

13 (8) Section 18(c)(1)(C)(ii) of the Office of Federal Procurement Pol-  
14 icy Act (41 U.S.C. 416(c)(1)(C)(ii)) is amended by striking “section 9  
15 of the Small Business Act” and inserting “chapters 261 and 263 of  
16 title 53, United States Code”.

17 (9) Section 502 of the Women’s Business Ownership Act of 1988  
18 (41 U.S.C. 417a) is amended by striking subsection (b) and inserting  
19 the following:

20 “(b) DEFINITIONS.—In this section, the terms ‘qualified HUBZone small  
21 business concern’, ‘small business concern owned and controlled by socially  
22 and economically disadvantaged individuals’, and ‘small business concern  
23 owned and controlled by women’ have the meanings given the terms in sec-  
24 tion 10101 of title 53, United States Code.”.

25 (10) Section 22(e)(2) of the Office of Federal Procurement Policy  
26 Act (41 U.S.C. 418a(c)(2)) is amended by striking “section 2(b) of the  
27 Small Business Innovation Development Act of 1982 (Public Law 97–  
28 219; 15 U.S.C. 638 note), and the declaration of policy in section 2  
29 of the Small Business Act (15 U.S.C. 631)” and inserting “section  
30 2(b) of the Small Business Innovation Development Act of 1982 (Pub-  
31 lic Law 97–219), and the declaration of policy in section 2 of the Small  
32 Business Act (Public Law 85–536)”.

33 (11) Section 32 of the Federal Procurement Policy Act (41 U.S.C.  
34 428) is amended—

35 (A) in subsection (a)(1), by striking “section 8(a) of the Small  
36 Business Act (15 U.S.C. 637(a))” and inserting “chapters 231 to  
37 235 of title 53, United States Code”; and

38 (B) in subsection (b), by striking “section 15(j) of the Small  
39 Business Act (15 U.S.C. 644(j))” and inserting “section 25108 of  
40 title 53, United States Code,”.

1           (12) Section 35(a)(3)(A) of the Federal Procurement Policy Act (41  
2           U.S.C. 431(a)(3)(A)) is amended by striking “section 15 of the Small  
3           Business Act (15 U.S.C. 644)” and inserting “chapter 251 of title 53,  
4           United States Code”.

5           (p) TITLE 42.—

6           (1) Section 1701(a)(7)(A) of the Public Health Service Act (42  
7           U.S.C. 300u(a)(7)(A)) is amended by striking “small businesses (as de-  
8           fined in section 3 of the Small Business Act)” and inserting “small  
9           business concerns (as defined in section 10101 of title 53, United  
10          States Code)”.

11          (2) The matter under the heading “SMALL AND DISADVANTAGED  
12          BUSINESS” under the heading “ADMINISTRATIVE PROVISIONS” under  
13          the heading “NATIONAL AERONAUTICS AND SPACE ADMINISTRATION”  
14          in title III of the Departments of Veterans Affairs and Housing and  
15          Urban Development, and Independent Agencies Appropriations Act,  
16          1990 (42 U.S.C. 2473b), is amended by striking “(within the meaning  
17          of section 637(a) (5) and (6) of the Small Business Act (15 U.S.C.  
18          637(a) (5) (6))” and inserting “(as defined in section 10101 of title  
19          53, United States Code)”.

20          (3) Section 808(f)(7) of Public Law 90–284 (42 U.S.C. 3608(f)(7))  
21          is amended by striking “section 8(a) of the Small Business Act” and  
22          inserting “chapters 231 to 235 of title 53, United States Code”.

23          (4) The first undesignated paragraph under the heading “ADMINIS-  
24          TRATIVE PROVISIONS” under the heading “ENVIRONMENTAL PROTEC-  
25          TION AGENCY” in title III of the Departments of Veterans Affairs and  
26          Housing and Urban Development, and Independent Agencies Appro-  
27          priations Act, 1993 (42 U.S.C. 4370d), is amended by striking “(with-  
28          in the meaning of section 8(a) (5) and (6) of the Small Business Act  
29          (15 U.S.C. 637(a) (5) and (6)))” and inserting “(as defined in section  
30          10101 of title 53, United States Code)”.

31          (5) Section 406(a)(3)(A)(ii)(I) of the Robert T. Stafford Disaster  
32          Relief and Emergency Assistance Act (42 U.S.C. 5172(a)(3)(A)(ii)(I))  
33          is amended by striking “section 7(b) of the Small Business Act (15  
34          U.S.C. 636(b))” and inserting “chapter 213 of title 53, United States  
35          Code”.

36          (6) Section 622(e) of the Robert T. Stafford Disaster Relief and  
37          Emergency Assistance Act (42 U.S.C. 5197h(e)) is amended by strik-  
38          ing “(as defined in section 3(p) of the Small Business Act (15 U.S.C.  
39          632(p))) and inserting “(as defined in section 10101 of title 53, United  
40          States Code)”.

1 (7) Section 102(a)(23) of the Housing and Community Development  
2 Act of 1974 (42 U.S.C. 5302(a)(23)) is amended by striking “a busi-  
3 ness that meets the criteria set forth in section 3(a) of the Small Busi-  
4 ness Act” and inserting “a small business concern (as defined in sec-  
5 tion 10101 of title 53, United States Code)”.

6 (8) Section 105(a)(15) of the Housing and Community Development  
7 Act of 1974 (42 U.S.C. 5305(a)(15)) is amended by striking “entities  
8 organized under section 301(d) of the Small Business Investment Act  
9 of 1958” and inserting “specialized small business investment compa-  
10 nies (as defined in section 30301 of title 53, United States Code) orga-  
11 nized”.

12 (9) Section 362(f)(5)(B) of the Energy Policy and Conservation Act  
13 (42 U.S.C. 6322(f)(5)(B)) is amended by striking “section 3(a) of the  
14 Small Business Act (15 U.S.C. 632(a))” and inserting “section 10101  
15 of title 53, United States Code,”.

16 (10) Section 3159(a)(1) of the National Defense Authorization Act  
17 for Fiscal Year 1994 (42 U.S.C. 7256 note, Public Law 103–1956) is  
18 amended by striking “section 8(d) of the Small Business Act (15  
19 U.S.C. 637(d)) and regulations issued under that section” and insert-  
20 ing “chapter 243 of title 53, United States Code, and regulations  
21 issued under that chapter”.

22 (11) Section 3135(b)(2) of the National Defense Authorization Act  
23 for Fiscal Year 1993 (42 U.S.C. 7261b(b)(2)) is amended by striking  
24 “prescribed pursuant to section 3(a) of the Small Business Act (15  
25 U.S.C. 632(a))” and inserting “prescribed for a small business concern  
26 under section 10101 of title 53, United States Code”.

27 (12) Section 507(e)(1)(B) of the Clean Air Act (42 U.S.C.  
28 7661f(e)(1)(B)) is amended by striking “the Small Business Act” and  
29 inserting “section 10101 of title 53, United States Code”.

30 (13) Section 107(p)(1) of the Comprehensive Environmental Re-  
31 sponse, Compensation, and Liability Act of 1980 (42 U.S.C.  
32 9607(p)(1)) is amended—

33 (A) in subparagraph (B), by striking “(within the meaning of  
34 the Small Business Act (15 U.S.C. 631 et seq.))” and inserting  
35 “(as defined in section 10101 of title 53, United States Code)”;  
36 and

37 (B) in the matter following subparagraph (C), by striking “the  
38 Small Business Act (15 U.S.C. 631 et seq.)” and inserting “sub-  
39 titles I and II of title 53, United States Code”.

40 (14) Section 626(a) of the Community Economic Development Act  
41 of 1981 (42 U.S.C. 9815(a)) is amended—

1 (A) by striking paragraph (1) and inserting “(1) Funds that are  
2 invested directly or indirectly in a small business investment com-  
3 pany (as defined in section 30301 of title 53, United States Code)  
4 shall be included as—

5 “(A) private capital for purposes of the definition of that term in  
6 section 30301 of title 53, United States Code; and

7 “(B) paid-in capital for purposes of section 33103(c)(1) of title 53,  
8 United States Code.”; and

9 (B) in paragraph (2), by striking “section 8(a) of the Small  
10 Business Act” and inserting “chapters 231 to 235 of title 53,  
11 United States Code”.

12 (15) Section 3(4) of the Renewable Energy and Energy Efficiency  
13 Technology Competitiveness Act of 1989 (42 U.S.C. 12002(4)) is  
14 amended by striking “under section 3(a) of the Small Business Act”  
15 and inserting “for a small business concern under section 10101 of  
16 title 53, United States Code.”.

17 (16) Section 3021(b) of the Energy Policy Act of 1992 (42 U.S.C.  
18 13556(b)) is amended—

19 (A) in paragraph (1), by striking “such term has under section  
20 3 of the Small Business Act (15 U.S.C. 632)” and inserting  
21 “given the term in section 10101 of title 53, United States Code”;

22 (B) in paragraph (2), by striking “such term has under section  
23 8(d) of the Small Business Act (15 U.S.C. 637(d))” and inserting  
24 “that that term has under the contract clause described in section  
25 24301(c) of title 52, United States Code.”; and

26 (C) in paragraph (3), by striking “section 3(p) of the Small  
27 Business Act (15 U.S.C. 632(o))” and inserting “section 10101 of  
28 title 53, United States Code”.

29 (17) Section 2(5) of the Energy Policy Act of 2005 (42 U.S.C.  
30 15801(2)) is amended by striking “section 3 of the Small Business Act  
31 (15 U.S.C. 632)” and inserting “section 10101 of title 53, United  
32 States Code”.

33 (18) Section 988(f)(3) of the Energy Policy Act of 2005 (42 U.S.C.  
34 16352(f)(3)) is amended—

35 (A) in subparagraph (A), by striking “section 9 of the Small  
36 Business Act (15 U.S.C. 638)” and inserting “division H of sub-  
37 title II of title 53, United States Code”; and

38 (B) in subparagraph (B), by striking “that section” and insert-  
39 ing “that division”.

40 (19) Section 1003(a)(1) of the Energy Policy Act of 2005 (42  
41 U.S.C. 16393(a)(1)) is amended by striking “socially and economically

1           disadvantaged small business concerns (as defined in section 8(a)(4) of  
2           the Small Business Act (15 U.S.C. 63y(a(4)))” and inserting “small  
3           business concerns owned and operated by socially and economically dis-  
4           advantaged individuals (as defined in section 10101 of title 53, United  
5           States Code)”.

6           (q) TITLE 43.—Section 29(e)(4)(C) of the Alaska Native Claims Settle-  
7           ment Act (43 U.S.C. 1626(e)(4)(C)) is amended by striking “section 8 of  
8           Public Law 85–536” and inserting “chapters 231 to 235 of title 53, United  
9           States Code,”.

10          (r) TITLE 50.—Section 702 of the Defense Production Act of 1950 (50  
11          App. U.S.C. 2152) is amended—

12               (1) in paragraph (17), by striking “section 3(a) of the Small Busi-  
13               ness Act” and inserting “section 10101 of title 53, United States  
14               Code,”; and

15               (2) in paragraph (18), by striking “section 8(d)(3)(C) of the Small  
16               Business Act” and inserting “section 10101 of title 53, United States  
17               Code”.

18          **SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.**

19          (a) DEFINITIONS.—In this section:

20               (1) SOURCE PROVISION.—The term “source provision” means a pro-  
21               vision of law that is replaced by a title 53 provision.

22               (2) TITLE 53 PROVISION.—The term “title 53 provision” means a  
23               provision of title 53, United States Code, that is enacted by section 3.

24          (b) CUTOFF DATE.—The title 53 provisions replace certain provisions of  
25          law enacted on or before February 4, 2009. If a law enacted after that date  
26          amends or repeals a source provision, that law is deemed to amend or re-  
27          peal, as the case may be, the corresponding title 53 provision. If a law en-  
28          acted after that date is otherwise inconsistent with a title 53 provision or  
29          a provision of this Act, that law supersedes the title 53 provision or provi-  
30          sion of this Act to the extent of the inconsistency.

31          (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of de-  
32          termining whether one provision of law supersedes another based on enact-  
33          ment later in time, a title 53 provision is deemed to have been enacted on  
34          the date of enactment of the source provision that the title 53 provision re-  
35          places.

36          (d) REFERENCES TO TITLE 53 PROVISIONS.—A reference to a title 53  
37          provision is deemed to refer to the corresponding source provision.

38          (e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source pro-  
39          vision, including a reference in a regulation, order, or other law, is deemed  
40          to refer to the corresponding title 53 provision.

1 (f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A  
 2 regulation, order, or other administrative action in effect under a source  
 3 provision continues in effect under the corresponding title 53 provision.

4 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or  
 5 an offense committed under a source provision is deemed to have been taken  
 6 or committed under the corresponding title 53 provision.

7 **SEC. 7. REPEALS.**

8 The following provisions of law are repealed, except with respect to rights  
 9 and duties that matured, penalties that were incurred, or proceedings that  
 10 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(d)(1), (g), (i), (j) .....	15 U.S.C. 631(d)(1), (g), (i), (j).
	3 .....	15 U.S.C. 632.
	4 .....	15 U.S.C. 633.
	5 .....	15 U.S.C. 634.
	6 .....	15 U.S.C. 635.
	7 .....	15 U.S.C. 636.
	8 .....	15 U.S.C. 637.
	9 .....	15 U.S.C. 638.
	10 .....	15 U.S.C. 639.
	11 .....	15 U.S.C. 640.
	12 .....	15 U.S.C. 641.
	13 .....	15 U.S.C. 642.
	14 .....	15 U.S.C. 643.
	15 .....	15 U.S.C. 644.
	16 .....	15 U.S.C. 645.
	17 .....	15 U.S.C. 646.
	18 .....	15 U.S.C. 647.
	19 .....	15 U.S.C. 631.
	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.
	33 .....	15 U.S.C. 657c.
	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. 631 note.
Small Business Investment Act of 1958 (Public Law 85–699) .....	101 .....	15 U.S.C. 631 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.



## Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	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. 689b.
	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.
	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.
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Public Law 99-591 .....	101(a) [title VI, § 630], 100 Stat. 3341, 3341-30.	15 U.S.C. 638 note.
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