
15 U.S. Code § 636

Additional powers

(a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) In general.—

(A) Credit elsewhere.—

(i) In general.—

The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere. No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(ii) Liquidity.—

On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guaranteed portion of the loan being sold on the secondary market.

(B) Background checks.—

Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(C) Lending limits of lenders.—

On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender.

(2) Level of participation in guaranteed loans.—

(A) In general.— Except as provided in subparagraphs (B), (D), (E), and (F), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

- (i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or
- (ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.

(B)Reduced participation upon request.—

(i)In general.—

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

(ii)Prohibition.—

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

(C)Interest rate under preferred lenders program.—

(i)In general.—

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

(ii)Export-import bank lenders.—

Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.

(iii)Preferred lenders program defined.— For purposes of this subparagraph, the term “Preferred Lenders Program” means any program established by the Administrator, as authorized under the proviso in section 634(b)(7) of this title, under which a written agreement between the lender and the Administration delegates to the lender—

- (I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and
- (II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D)Participation under export working capital program.—

In an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be 90 percent.

(E)Participation in international trade loan.—

In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(F)Participation in the paycheck protection program.—

In an agreement to participate in a loan on a deferred basis under paragraph (36), the participation by the Administration shall be 100 percent.

(3) No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from

the business loan and investment fund established by this chapter would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed \$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000 may be used for working capital, supplies, or financings under paragraph (14) for export purposes; and

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

(4) Interest rates and prepayment charges.—

(A) Interest rates.—

Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) Payment of accrued interest.—

(i) In general.—

Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) Loans sold on secondary market.—

If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii) Applicability.—

Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) Prepayment charges

(i) In general.— A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

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

(II) the prepayment is voluntary;

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

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

(ii) Subsidy recoupment fee.— The subsidy recoupment fee charged under clause (i) shall be—

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

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

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

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however, That—*

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining “sound value” shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further, That such status need not be as sound as that required for general loans under this subsection; and* ^[1]

(C) Repealed. Pub. L. 97–35, title XIX, § 1910, Aug. 13, 1981, 95 Stat. 778.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further, That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.*

(7)

(A)In general.—

The Administrator may defer payments on the principal and interest of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(B)Deferral requirements.—With respect to a deferral provided under this paragraph, the Administrator may allow lenders under this subsection—

(i) to provide full payment deferment relief (including payment of principal and interest) for a period of not more than 1 year; and

(ii) to provide an additional deferment period if the borrower provides documentation justifying such additional deferment.

(C)Secondary market.—

(i)In general.—

Except as provided in clause (ii), if an investor declines to approve a deferral or additional deferment requested by a lender under subparagraph (B), the Administrator shall exercise the authority to purchase the loan so that the borrower may receive full payment deferment relief (including payment of principal and interest) or an additional deferment as described in subparagraph (B).

(ii)Exception.—

If, in a fiscal year, the Administrator determines that the cost of implementing clause (i) is greater than zero, the Administrator shall not implement that clause.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 631(c) ^[2] of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12)

(A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: *Provided, however,* That such loan proceeds shall not be used primarily for research and development.

(b) ^[3] The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958 [15 U.S.C. 694–1]. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than \$1,000,000.

(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.].

(14)Export working capital program.—

(A)In general.—

The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B)Terms.—

(i)Loan amount.—

The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii)Fees.—

(I)In general.—

For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

(II) Untapped credit.—

The Administrator may not assess a fee on capital that is not accessed by the small business concern.

(C) Considerations.—

When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

(D) Marketing.—

The Administrator shall aggressively market its export financing program to small businesses.

(15)

(A) The Administration may guarantee loans under this subsection—

(i) to qualified employee trusts with respect to a small business concern for the purpose of purchasing, and for any transaction costs associated with purchasing, stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern; and

(ii) to a small business concern under a plan approved by the Administrator, if the proceeds from the loan are only used to make a loan to a qualified employee trust, and for any transaction costs associated with making that loan, that results in the qualified employee trust owning at least 51 percent of the small business concern.

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

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of title 26), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

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

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

(iv) with respect to a loan made to a trust, or to a cooperative in accordance with paragraph (35)—

(I) a seller of the small business concern may remain involved as an officer, director, or key employee of the small business concern when a qualified employee trust or cooperative has acquired 100 percent of ownership of the small business concern; and

(II) any seller of the small business concern who remains as an owner of the small business concern, regardless of the percentage of ownership interest, shall be required to provide a personal guarantee by the Administration.

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated

as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration, which shall include—

(i) the total number of loans made to employee-owned business concerns that were guaranteed by the Administrator under this subsection or section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), including the number of loans made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives;

(ii) the total number of financings made to employee-owned business concerns by companies licensed under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 696(c)) [15 U.S.C. 681(c)], including the number of financings made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives; and

(iii) any outreach and educational activities conducted by the Administration with respect to employee-owned business concerns.

(F) A small business concern that makes a loan to a qualified employee trust under subparagraph (A)(ii) is not required to contain the same terms and conditions as the loan made to the small business concern that is guaranteed by the Administration under such subparagraph.

(G) With respect to a loan made to a qualified employee trust under this paragraph, or to a cooperative in accordance with paragraph (35), the Administrator may, as deemed appropriate, elect to not require any mandatory equity to be provided by the qualified employee trust or cooperative to make the loan.

(16) International trade.—

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

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

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection; or

(iii) by providing working capital.

(B) Security.—

(i) In general.—

Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii) Exception.—

A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

(C) Engaged in international trade .—

For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

(D) Adversely affected by international trade .— For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

- (i) is confronting increased competition with foreign firms in the relevant market; and
- (ii) is injured by such competition.

(E) Findings by certain federal agencies .—

For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 [19 U.S.C. 2341 et seq.].

(F) List of export finance lenders .—

(i) Publication of list required .— The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

- (I) this paragraph;
- (II) paragraph (14); or
- (III) paragraph (34).

(ii) Availability of list .— The Administrator shall—

- (I) post the list published under clause (i) on the website of the Administration; and
- (II) make the list published under clause (i) available, upon request, at each district office of the Administration.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) Guarantee fees .—

(A) In general .— With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

- (i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.
- (ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.
- (iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.
- (iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

(B)Retention of certain fees.—

Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19)

(A) In addition to the Preferred Lenders Program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C)Authority to liquidate loans.—

(i)In general.—

The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii)Automatic approval.—

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

(20)

(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 637(a) of this title. Such assistance may be provided only if the Administration determines that—

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

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

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

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

(B)

(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

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

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

(iii) the term of which is not more than twenty-five years; and

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(21)

(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

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

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

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

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

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

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

(D) For purposes of this paragraph a qualified individual is—

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

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

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

termination (or substantial reduction) of a Department of Defense program.

(E)**Job creation and community benefit.**— In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

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

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

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

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

(23)**Yearly fee.**—

(A)**In general.**—

With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 661a of title 2.

(B)**Payer.**—

The yearly fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C)**Lowering of borrower fees.**— If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on December 8, 2004.

(24)**Notification requirement.**—

The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25)**Limitation on conducting pilot projects.**—

(A)**In general.**—

Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B)**"Pilot program" defined.**—

In this paragraph, the term ‘pilot program’ means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C)Low documentation loan program.—

The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after September 30, 1996, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26)Calculation of subsidy rate.—

All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing loans under this chapter.

(27) Repealed. Pub. L. 106–8, § 3(c), Apr. 2, 1999, 113 Stat. 16.

(28)Leasing.—

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

(29)Real estate appraisals.—

(A)In general.— With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(i) shall be required by the Administration in connection with any such loan, if such loan is in an amount greater than the Federal banking regulator appraisal threshold; or

(ii) may be required by the Administration or the lender in connection with any such loan, if such loan is in an amount equal to or less than the Federal banking regulator appraisal threshold, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(B)Federal banking regulator appraisal threshold defined.—

For purposes of this paragraph, the term “Federal banking regulator appraisal threshold” means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

(30)Ownership requirements.—

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

(31)Express loans.—

(A)Definitions.— As used in this paragraph:

(i) The term “disaster area” means the area for which the President has declared a major disaster, during the 5-year period beginning on the date of the declaration.

(ii) The term “express lender” means any lender authorized by the Administration to participate in the

Express Loan Program.

(iii) The term “express loan” means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iv) The term “Express Loan Program” means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guarantee rate of not more than 50 percent.

(B)Restriction to express lender. —

The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C)Grandfathering of existing lenders. —

Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D)Maximum loan amount. —

The maximum loan amount under the Express Loan Program is \$500,000.

(E)Option to participate. —

Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F)Express loans for renewable energy and energy efficiency. —

(i)**Definitions.**— In this subparagraph—

(I) the term “biomass” —

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

(DD) plants (including aquatic plants and grasses);

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or

(BB) unsegregated solid waste;

(II) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term “renewable energy system” means a system of energy derived from—

(aa) a wind, solar, biomass (including biodiesel), or geothermal source; or

(bb) hydrogen derived from biomass or water using an energy source described in item (aa).

(ii)**Loans.**— The Administrator may make a loan under the Express Loan Program for the purpose of—

(I) purchasing a renewable energy system; or

(II) carrying out an energy efficiency project for a small business concern.

(G)**Guarantee fee waiver for veterans.**—

(i)**Guarantee fee waiver.**—

The Administrator may not collect a guarantee fee described in paragraph (18) in connection with a loan made under this paragraph to a veteran or spouse of a veteran on or after October 1, 2015.

(ii)**Definition.**— In this subparagraph, the term “veteran or spouse of a veteran” means—

(I) a veteran, as defined in section 632(q)(4) of this title;

(II) an individual who is eligible to participate in the Transition Assistance Program established under section 1144 of title 10;

(III) a member of a reserve component of the Armed Forces named in section 10101 of title 10;

(IV) the spouse of an individual described in subclause (I), (II), or (III); or

(V) the surviving spouse (as defined in section 101 of title 38) of an individual described in subclause (I), (II), or (III) who died while serving on active duty or as a result of a disability that is service-connected (as defined in such section).

(H)**Recovery opportunity loans.**—

(i)**In general.**—

The Administrator may guarantee an express loan to a small business concern located in a disaster area in accordance with this subparagraph.

(ii)**Maximums.**— For a loan guaranteed under clause (i)—

(I) the maximum loan amount is \$150,000; and

(II) the guarantee rate shall be not more than 85 percent.

(iii)**Overall cap.**—

A loan guaranteed under clause (i) shall not be counted in determining the amount of loans made to a borrower for purposes of subparagraph (D).

(iv)**Operations.**—

A small business concern receiving a loan guaranteed under clause (i) shall certify that the small business concern was in operation on the date on which the applicable major disaster occurred as a condition of receiving the loan.

(v)**Repayment ability.**—

A loan guaranteed under clause (i) may only be made to a small business concern that demonstrates, to the satisfaction of the Administrator, sufficient capacity to repay the loan.

(vi)**Timing of payment of guarantees.**—

(I)**In general.**—

Not later than 90 days after the date on which a request for purchase is filed with the Administrator, the Administrator shall determine whether to pay the guaranteed portion of the loan.

(II)**Recapture.**—

Notwithstanding any other provision of law, unless there is a subsequent finding of fraud by a court of competent jurisdiction relating to a loan guaranteed under clause (i), on and after the date that is 6 months after the date on which the Administrator determines to pay the guaranteed portion of the loan, the Administrator may not attempt to recapture the paid guarantee.

(vii) Fees. —

(I) In general. —

Unless the Administrator has waived the guarantee fee that would otherwise be collected by the Administrator under paragraph (18) for a loan guaranteed under clause (i), and except as provided in subclause (II), the guarantee fee for the loan shall be equal to the guarantee fee that the Administrator would collect if the guarantee rate for the loan was 50 percent.

(II) Exception. —

Subclause (I) shall not apply if the cost of carrying out the program under this subsection in a fiscal year is more than zero and such cost is directly attributable to the cost of guaranteeing loans under clause (i).

(viii) Rules. —

Not later than 270 days after November 25, 2015, the Administrator shall promulgate rules to carry out this subparagraph.

(32) Loans for energy efficient technologies. —

(A) Definitions. — In this paragraph—

(i) the term “cost” has the meaning given that term in section 661a of title 2;

(ii) the term “covered energy efficiency loan” means a loan—

(I) made under this subsection; and

(II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term “pilot program” means the pilot program established under subparagraph (B).^[4]

(B) Establishment. —

The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

(C) Duration. —

The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) Maximum participation. —

A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) Fees. —

(i) In general. —

The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) Waiver. — The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans

exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii)**Effect of waiver.**— If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv)**No increase of fees.**—

The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) **GAO report.**—

(i)**In general.**—

Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii)**Contents.**— The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33)**Increased veteran participation program.**—

(A)**Definitions.**— In this paragraph—

(i) the term “cost” has the meaning given that term in section 661a of title 2;

(ii) the term “pilot program” means the pilot program established under subparagraph (B); and

(iii) the term “veteran participation loan” means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

(B)**Establishment.**—

The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C)**Duration.**—

The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D)**Maximum participation.**—

A veteran participation loan shall include the maximum participation levels by the Administrator

permitted for loans made under this subsection.

(E) Fees.—

(i) In general.—

The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) Waiver.— The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) Effect of waiver.— If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) No increase of fees.—

The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO report.—

(i) In general.—

Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) Contents.— The report submitted under clause (i) shall include—

(I) the number of veteran participation loans for which fees were reduced under the pilot program;

(II) a description of the impact of the pilot program on the program under this subsection;

(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(IV) recommendations for improving the pilot program.

(34) Export express program.—

(A) Definitions.— In this paragraph—

(i) the term “export development activity” includes—

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

(II) participation in a trade show that takes place outside the United States;

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

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

- (V) performing a service contract from buyers located outside the United States;
 - (VI) obtaining transaction-specific financing associated with completing export orders;
 - (VII) purchasing real estate or equipment to be used in the production of goods or services for export;
 - (VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and
 - (IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and
- (ii) the term “express loan” means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

(B) Authority.—

The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) Level of participation.—

(i) Maximum amount.—

The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

(ii) Percentage.— For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

- (I) 90 percent of a loan that is not more than \$350,000; and
- (II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.

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