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SMALL BUSINESS ACT AMENDMENTS—1972

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HEARING

BEFORE THE

SUBCOMMITTEE ON SMALL BUSINESS

OF THE

COMMITTEE ON

BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 3166

A BILL TO AMEND THE SMALL BUSINESS ACT

MARCH 9, 1972

Printed for the use of the Committee on Banking, Housing
and Urban Affairs




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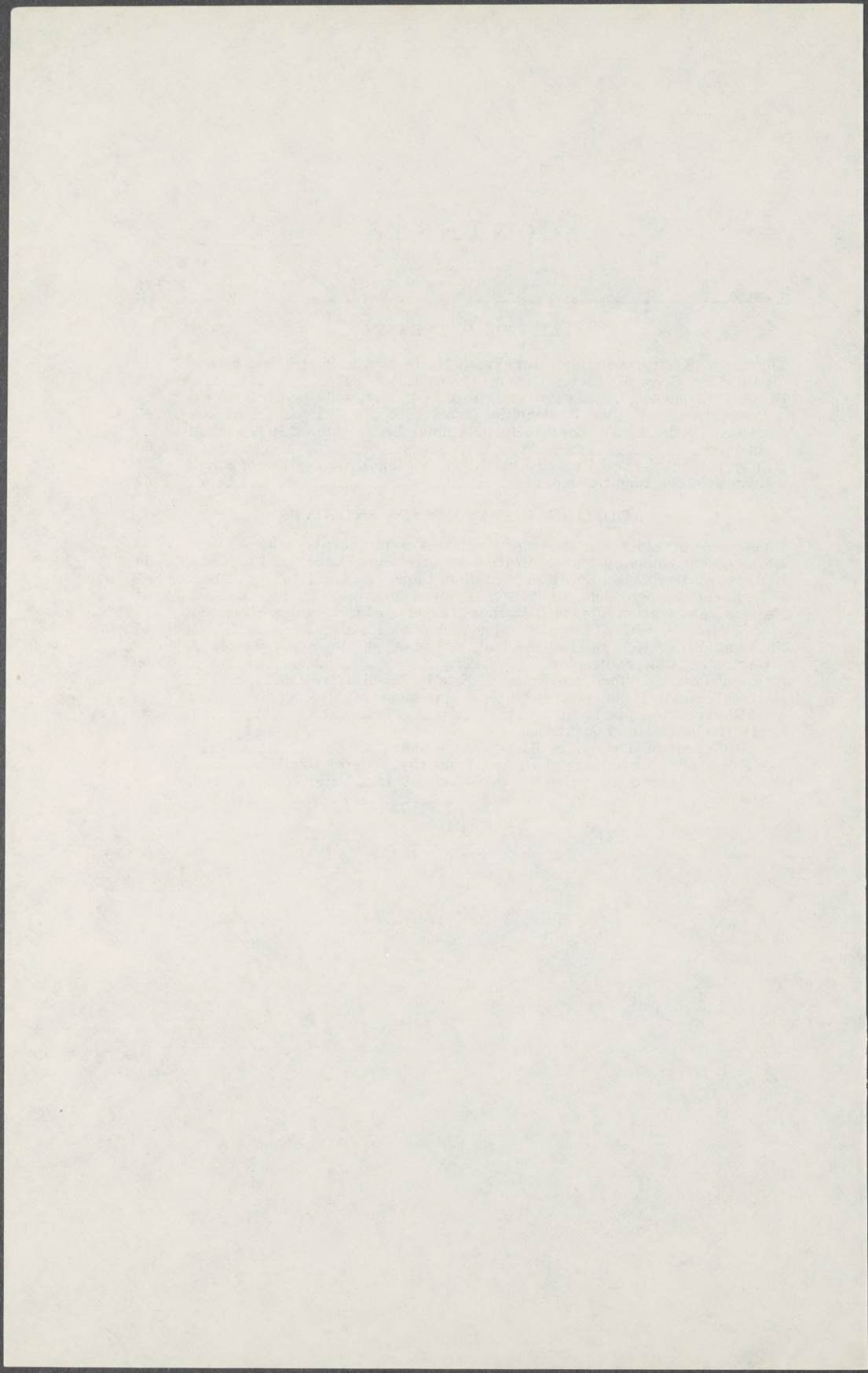
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SMALL BUSINESS ACT AMENDMENTS—1972

THURSDAY, MARCH 9, 1972

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5302, New Senate Office Building, Senator Alan Cranston, presiding.

Present: Senators Cranston and Roth.

Senator CRANSTON. The hearing will please come to order.

This hearing today by the Small Business Subcommittee is on S. 3166, a bill to amend the Small Business Act.

The subcommittee chairman, Senator McIntyre, has expressed his regrets. He will be unable to attend.

S. 3166 would amend section 4 of 4(c) of the Small Business Act to increase the total amount of loans guaranteed and other obligations outstanding by the Small Business Administration.

Administrator Kleppe informed the committee in February that by the end of this fiscal year the maximum level set by Congress in May of 1971 will have been reached.

This proposed legislation would increase from \$3.1 billion to \$5.8 billion SBA's lending authority for direct immediate participation and guaranteed loans under section 7(a), displaced business loans under 7(b) (3), and trade adjustment loans under 7(e), subcontract authority under 8(a), and economic opportunity loans under title IV of the Economic Opportunity Act of 1964.

Paragraph 2 of section 1 would increase from \$450 million to \$650 million SBA's lending authority to SBIC's under title III of the Small Business Investment Act of 1968.

Paragraph 3 of section 1 will increase from \$500 to \$700 million SBA's authority on loans to State and local development companies.

Paragraph 4 of the bill would increase from \$300 million to \$450 million SBA's lending authority under title IV of the Economic Opportunity Act of 1964 for loans to low income individuals and for businesses located in areas of high unemployment or low income.

Section 2 of the bill would increase the SBA lending authority under section 7(a) from a maximum loan of \$350,000 to \$500,000.

Small business is defined by the act as one which is independently owned and operated and which is not dominant in its field of operation. The \$350,000 limitation now imposed on SBA has not been increased since the agency was made permanent in 1958.

During the intervening years, business costs have increased considerably and if small businesses are to remain competitive they must be assured of available capital.

(The bill is reprinted as follows:)

92^D CONGRESS
2^D SESSION

S. 3166

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972

Mr. McINTYRE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Small Business Act.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (4) of section 4 (c) of the Small Business
4 Act (15 U.S.C. 633) is amended—
5 (1) by striking out “\$3,100,000,000” and inserting
6 in lieu thereof “\$5,800,000,000”;
7 (2) by striking out “\$450,000,000” and inserting
8 in lieu thereof “\$650,000,000”;
9 (3) by striking out “\$500,000,000” and inserting
10 in lieu thereof “\$700,000,000”; and

1 (4) by striking out "\$300,000,000" and inserting
2 in lieu thereof "\$450,000,000".

3 SEC. 2. That paragraphs 4 (A) and 5 (A) of section
4 7 (A) of the Small Business Act (15 U.S.C. 636) are
5 amended by striking out "\$350,000" and inserting in lieu
6 thereof "\$500,000".

Senator CRANSTON. I am glad Senator Roth is present.

Do you have a statement?

Senator ROTH. No statement.

Senator CRANSTON. Mr. Kleppe, it is a pleasure to see you. You may proceed as you wish.

I would appreciate your introducing your associate and I have a brief statement following your statement.

STATEMENT OF THOMAS S. KLEPPE, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY JOHN A. KNEBEL, GENERAL COUNSEL

Mr. KLEPPE. Thank you.

I would like to introduce to the committee the gentleman at the table with me, our general counsel, Mr. John Knebel.

Mr. Chairman, I think with your permission I would like to read my statement. It is relatively short and I think it explains everything that we are thinking about at this time.

Senator CRANSTON. Fine.

Mr. KLEPPE. I appreciate the opportunity to appear before this committee once again to discuss our current request for additional increases in the revolving fund ceilings stated in section 4(c) of the Small Business Act. S. 3166, which you have introduced, Mr. Chairman, would provide for the necessary increases.

I should qualify this and indicate that "Mr. Chairman" refers to Senator McIntyre.

S. 3166 would effect four amendments to the provisions of section 4(c) (4) of the Small Business Act governing the total amount of loans, guarantees, and other obligations and commitments which may be outstanding at any one time from our business loan and investment fund. The first of these amendments would increase from \$3.1 billion to \$5.8 billion the amount which may be outstanding from the fund at any one time for the purposes of:

- (1) our regular business loan program under section 7(a) of Small Business Act;
- (2) the loan program we administer, pursuant to section 7(b) (3) of that act, known generally as the displaced business loan program;
- (3) the trade adjustment loan program authorized by section 7(e) of the act;
- (4) the section 8(a) prime contract assistance program; and
- (5) the economic opportunity loan program authorized by title IV of the Economic Opportunity Act of 1964.

Our current budget projections indicate that, as of the end of this current fiscal year—less than 4 months from now, Mr. Chairman—our outstanding loans and commitments to be measured against the current \$3.1-billion ceiling will total \$3,041,700,000. This will leave virtually no reserve to carry us into fiscal year 1973. Although no decisions regarding our fiscal year 1974 loan levels have been made, we estimate that our outstanding loans and commitments projected through fiscal year 1974 will total \$5,626 million. It is on this basis that we have requested an increase in this ceiling to \$5.8 billion, which

would carry us through fiscal year 1974 and permit an additional contingency reserve of \$174 million.

Within the present \$3.1-billion ceiling, there is a subceiling governing the total amount which may be outstanding from the fund at any one time for economic opportunity loans made under title IV of the Economic Opportunity Act. The current level of this subceiling is \$300 million. Our estimates for this program, projected through fiscal year 1974, total \$358.5 million. We have requested that this subceiling for economic opportunity loans be increased to \$450 million.

We are also requesting that the dollar ceiling governing the total amount which may be outstanding from the fund at any one time for purposes of the small business investment company program under title III of the Small Business Investment Act of 1958, be increased from \$450 million to \$650 million. Our projections indicate that the present ceiling will not carry us through fiscal year 1973. Although no decision has been made regarding the SBIC program level for fiscal year 1974, our projection is that outstanding loans and commitments through fiscal year 1974 will total \$565.4 million. Increasing the ceiling to \$650 million, as we have requested, would allow an additional contingency reserve of \$84.6 million.

Finally, Mr. Chairman, we are requesting that the ceiling governing amounts outstanding from the fund for purposes of the State and local development company loan programs under title V of the Small Business Investment Act of 1958, be increased from \$500 million to \$700 million. Our projections here indicate that the total amount outstanding through the end of fiscal year 1974 will equal \$550 million. The requested \$700-million ceiling would allow a very adequate contingency reserve for this vital program.

Except for the ceiling governing the State and local development company loan programs, our current projections indicate that none of the current ceiling figures will carry us through the next fiscal year. Most critical, of course, is the \$3.1-billion ceiling which I first discussed. As I mentioned earlier, that figure will permit us to operate through the current fiscal year with very little room to spare. We ask the assistance of this committee in recommending that the Senate promptly enact the provision of S. 3166 raising these ceiling figures to the levels necessary to carry SBA's programs through fiscal year 1974.

This concludes my statement, Mr. Chairman, and I will be glad to take your questions.

Senator CRANSTON. Thank you very much, Mr. Kleppe.

In regard to the situation involving last year's earthquake in Los Angeles, the Small Business Administration recently rejected 28,000 applications for low-interest disaster loans from southern California homeowners claiming earthquake damage.

Mr. Kleppe, as Administrator, you refused to label all of these applications as phony. You admitted that some of these applicants would have previously received compensation. You further admitted that for these 28,000 individuals to obtain necessary engineering data to prove their claims may be difficult and in some cases may be impossible.

I think your position and the position of the SBA is totally unacceptable. It is imperative that we do not neglect those persons who

suffered legitimate damage during the San Fernando earthquake. The lateness of applications, or the shortage of funds, or allegedly fraudulent claims made by others in the past must not keep the SBA from honoring current claims that are valid.

City Councilmen Billy Mills and Louis Nowell of Los Angeles and a special Los Angeles earthquake committee have alleged that the SBA was negligent in its handling of initial applications for relief. According to their allegations, payments were made without adequate inspections, unsubstantiated claims were not returned for further evidence, and applications were approved where all necessary data were not supplied.

If the SBA was negligent as these officials alleged, I would like to know why adequate procedures were not employed to safeguard against abuse. I would like to know what new procedures, if any have been employed to protect against abuse in the future.

It is entirely correct for SBA to apply stringent standards in its review of applications. I have no quarrel with your position on that.

However, it is neither fair nor correct for the SBA to reject out of hand any claim for legitimate compensation. Nor is it fair for SBA to discriminate against poorer claimants who cannot afford to hire earthquake engineering consultants, or who do not know how to employ the services of such experts.

The SBA should review all of the 28,000 applications it rejected. It should determine which of those might be entitled to compensation if further evidence is provided. It should help provide engineering experts to help prove those claims where the provision is not economically prohibitive.

Mr. Kleppe, I urge you to direct SBA to take these steps.

I would now like to ask some specific questions. Of course if you want to comment on any of that as we go along, that is of course your right and perfectly in order.

First of all, regarding 28,000 applications for disaster loans in the Los Angeles area which were recently rejected, you did not label all 28,000 as phony. What percentage would you estimate are fraudulent?

Mr. KLEPPE. We are not saying, Mr. Chairman, that any are fraudulent. We have no specific proof that there is any fraud involved in any of them. The whole question is covered in defining a word that you used in your statement which is "legitimate." We have used the word valid. You can take either one, if you wish.

I am going to try to explain if I can, the difficult position that SBA is in. Indeed to go into a little background and bring it up-to-date. I have testified before different committees in the House and the Senate about our policies under the disaster loan program up until November last year. These were very liberal policies because we believed the intent of Congress was to register sympathy, empathy and action to help these people who suffered in the disaster.

So, Mr. Chairman, we would go into a disaster area and ask three questions: Did you own it? Did you lose it? Can you repay it?

Those are pretty simple questions.

The demands that we placed upon the applicant after that were very minimal from the standpoint of making them the disaster loan.

Now we get into a new experience in this earthquake situation in California because of seismologists indicating that the tremors of up to a five level could have caused some cosmetic cracks in the wall.

Here we in SBA are to make a determination: Were those cracks caused by the earthquake or were they there before? Who are we to judge the validity as it were of those cracks?

We recite to you the true facts. We have made 53,280 loans totaling almost \$206 million in the Los Angeles earthquake. We have another 38,000 applications on hand of which we believe there are 5,600 that qualify as valid claims based on earthquake damage that we can determine. All of the other applications have been gone through more than once to see whether or not on the basis of the information submitted we could verify them. Over a period of time starting February 29 they are being returned to the applicants and in fact the plan is to reject them until further substantiation can come forward.

Why did this come about?

Senator CRANSTON. Are you speaking of the 28,000?

Mr. KLEPPE. The 28,000 has now gotten to be about 33,000 because of the flood of applications that came in just prior to closing February 29.

Senator CRANSTON. How many?

Mr. KLEPPE. About 33,000.

Senator CRANSTON. Are you speaking of those, when you say you narrowed it to 5,600?

Mr. KLEPPE. I am speaking, Mr. Chairman, of those on hand, a backlog total on hand.

Senator CRANSTON. Have those been reviewed? For validity.

Mr. KLEPPE. Yes; they have been reviewed once and maybe twice. We have identified about 5,600 of those as legitimate, the ones we are ready to process and make the loan on.

Now we estimate that the total of those is going to be about 24 additional million dollars on top of the \$206 million we have already made. So now this says we have 32,400 loans, they will be sent back for further evidence and further proof.

I know, you know, Mr. Chairman, that our disaster offices out there were open and functioning more than a year. Under normal circumstances we have a 6-month disaster declaration. We have extended Los Angeles twice because of the problems involved. Why didn't we get these applications in sooner? I guess I will leave that for you or anybody else to make their own determination but the truth of the matter is that we saw a pattern develop out there that was entirely different than we have ever seen in any disaster.

We have always had an increase of the loan applications the first and second quarter after the disaster occurred and then the third quarter they would start to decrease considerably.

In Los Angeles the opposite was true. We just got a start the first quarter and the second quarter, and then for the third quarter and the fourth quarter the chart just goes up like this in the number of loan applications received.

When I was in Los Angeles in April 1971, I had a press conference, the heat was on by everybody, public, private, political, SBA get going and process these applications. I made a commitment over television that we were going to increase our processing from 250 per week to 700 per week. I was back there and I had a press conference in January 1972, I believe it was, and I was able to report to that public out there in Los Angeles that we did four times better than my promise

and processed 2,800 loans a week. We reduced all of the backlog that was accumulated and as of October 1971 we had the backlog down to less than 900 loans which was something that could have been taken care of very easily, but what happened on the other side was that the loan applications coming in started to build up to 4,000 per week. We ran behind very seriously. Of course, the moneys were rapidly disappearing from our disaster loan fund.

We must consider also that we had three other Presidentially declared disasters around the country. We had a total of 40 disasters we were servicing and the funds all had to come out of the disaster loan fund. So we came up and asked for a supplemental appropriation for disaster funds and this is what focused the attention on the need to change our procedures. We instituted change in procedures in either November or December—December 21 last year.

What those procedures did was in fact say we are going to shift more of this burden of proof upon the applicant. Where we had been very liberal, the same people in many instances who were riding our back to work faster, make these loans, said "Now let's do a 180-degree switch." I got comments from exactly the same people and all of a sudden I had to be a chameleon in SBA and we had to change the whole thing around and we did. In those procedures the burdens of proof was shifted.

The other aspect of the procedures is that we always left the door open to take care of and process any legitimate application where we could prove by our inspection of the property that it did suffer damage from the earthquake and that this claim of validity was something we could easily define. It wasn't a question of a cosmetic repair. So we have processed those loans and we still have 5,600 that we believe qualify under those conditions.

Senator CRANSTON. Could I ask if you have made a permanent change now in where the burden of proof lies?

Mr. KLEPPE. Yes, we have, Mr. Chairman.

Senator CRANSTON. Is that for keeps now?

Mr. KLEPPE. This is for keeps nationwide after the emergency of the destitution of a disaster has passed for the first 30-60 days or so. We believe that this Congress, this Government intended for us to react as fast as we could when destruction struck, that means to go in and make loans and get it done primarily as fast and as reasonably as we can.

So we asked these three questions. Other than that we have instituted these procedures nationally. You see this question never arose when we had these other serious disasters as when we had the hurricanes down South and we had the serious flood conditions up in New Jersey. The earthquake is a different animal because of how difficult it is to identify a crack in the wall, a cosmetic repair from an actual damage that took place in the earthquake. Yet I can't say to those people that it didn't occur. That is why there is not fraud involved as I see it.

Senator CRANSTON. Are you saying burden of proof will not be on applicants during the first 60 days but will lie on them after 60 days has gone by?

Mr. KLEPPE. Let me say we intend to be a little more liberal the first 60 days.

Senator CRANSTON. On what basis do you justify that?

Mr. KLEPPE. We justify it on the exigency of the disaster, of the moment, of the hour. You take West Virginia right now. There is a great emotional turmoil in that area.

Senator CRANSTON. Are you using different standards for earthquake than for other disasters?

Mr. KLEPPE. No. These procedures went into effect nationwide December 21, 1971.

Senator CRANSTON. If somebody doesn't realize he can get help and doesn't figure that out very rapidly until 60 days or more has gone by he will be treated differently from somebody who is smart enough to realize that in the first days following the disaster he has more liberal treatment.

Mr. KLEPPE. In the case of Los Angeles it was much longer than that. It got to be almost a year before they realized that maybe there wasn't going to be another Government program, and maybe they should apply for an SBA loan.

I am not going to try to second-guess what those individuals out in Los Angeles thought. I did hear a lot of conversation about the fact that maybe there would be a special bill awarding grants comparable to what happened in Alaska in 1964.

Senator CRANSTON. On the question of fraud you have received reports that fraudulent claims were made in the wake of earthquake in California?

Mr. KLEPPE. Mr. Chairman, no. As I indicated before, we have no proof of fraud.

Senator CRANSTON. You have received no complaint from any source saying there were fraudulent claims following that earthquake?

Mr. KLEPPE. We received complaints suggesting there were some. We have done a considerable amount of investigating. A considerable amount. As a matter of fact, we went to some 2,400 borrowers to find the application of funds that they borrowed from us under the disaster loan program and we found—I didn't bring the percentages with me, I am drawing on my memory now—but it seemed to me it was 14 percent of those inspected that had accomplished less than 50 percent of the repair work. But 86 percent had accomplished all or substantially above 50 percent.

Senator CRANSTON. You uncovered then no evidence of fraud in your investigation. Have you uncovered any—

Mr. KLEPPE. Circumstantial only, Mr. Chairman. We have nothing that I am going to say to anybody that indicates to us there is any proof of fraud.

Senator CRANSTON. Have you uncovered any evidence of negligence in SBA handling of the earthquake claims?

Mr. KLEPPE. No. I refute that categorically because I think the record will show we turned the crank and we turned it hard and we took care of those applications faster than we have ever done in any earthquake or disaster that has ever struck, and I think the figures will justify what I just said. Mr. Chairman.

Senator CRANSTON. You said that some cases which were acceptable right after the earthquake are now not acceptable under new standards. Could you describe a case that would have been acceptable in the first 60 days and would not now be acceptable?

Mr. KLEPPE. That gets down to defining what is a valid claim and what is not a valid claim. But most easily I could describe the difference in the procedures we follow.

One was in the first instance a very liberal procedure because we would ask three questions, did you own it, did you lose it, can you repay it and we would make the loan.

Today we shift a burden of proof upon that individual to in fact offer proof of the fact that there is the damage, that they are going to get it repaired, and they are going to sign a completion certificate and then we, SBA, will disburse the funds. That is quite a difference.

Senator CRANSTON. We are going to shift back and forth so while I have more questions I will yield to Senator Roth.

Senator ROTH. Thank you.

I want to welcome the Administrator before our committee. I compliment him on the fine job he is doing. I certainly share with him the feeling that the Small Business Administration is one of the most important agencies of the Government.

What I have to ask does not necessarily reflect any disapproval of the figures, but I think Mr. Kleppe knows my concern over Federal deficit spending. So I would like to direct a few questions to him about the very substantial increase that he is now seeking for SBA.

Now, as I understand it, the overall requested total is \$5.8 billion which is an increase roughly of \$2.7 billion since 1971. If we go back to 1965 the loan authority of SBA was \$1.4 billion, so this in effect represents four times as much in roughly 6 or 7 years.

I also see in your statement that you expect to utilize by fiscal year 1974 almost all of the new sum that is being requested. Does that mean you are going to be coming back in 1974 asking for another substantial increase?

Mr. KLEPPE. Bill, first of all let me see if I can clear one thing. I am sure you understand what we are asking for here is guarantee authority only. We are not asking for funds.

Senator ROTH. I understand that.

Mr. KLEPPE. In answer to the second part of your question, these figures we project will take us through fiscal year 1974. That is why they are so large.

Certainly we would expect to be back in here 6 months prior to the expiration of fiscal year 1974 asking for an additional increase if our projections work out.

There is a very real reason why this is happening. Somehow or another, Senator Roth, this guarantee authority and the assistance that we can and do give small business is off the launching pad finally.

I qualify that by saying to you that just in the past 2 years we have increased the number of banks that participate with us by three times. We have three times as many banks today participating with SBA and its programs than we had just a very short time ago. It is on the move upward.

This is—we believe we have the claim to fame and if there is one it is this guarantee authority and the fact that the private sector furnishes the money and we come in and guarantee 90 percent of it, they take 10 percent. This is how we can take care of a part of these small business community demands. This is why we project these large figures upwards because we see what is happening with our

people in the banking industry today who are really getting behind and cooperating with SBA and its programs.

Senator ROTH. If I understand your figures, the increase is from \$3.1 billion.

Mr. KLEPPE. A 2.7 increase for the 2 fiscal years projected.

Senator ROTH. Let's take for example, the economic opportunity loans. You have a \$300-million ceiling now and you are asking to get a subtotal of \$450 million there.

Mr. KLEPPE. Yes.

Senator ROTH. Could you break down the other four categories, showing the changes you are programming for them?

Mr. KLEPPE. I believe my statement does that, Senator Roth. I believe you can find the information in there, the requests being made.

Senator ROTH. For example, you refer to them by title but I don't believe you cite any figures except for the economic opportunity sub-ceiling.

Mr. KLEPPE. Well, we recite in here the increase from the SBIC program from title III to go from \$450 million to \$650 million, and then we talk about the State and local development company loans under title V going from \$500 million to \$700 million. Those categories are described in my statement.

Senator ROTH. Well, for example, one of the breakdowns in your statement is the trade adjustment loan program.

Mr. KLEPPE. Yes.

Senator ROTH. What do you expect to be the requirements of that program?

Mr. KLEPPE. None. That is in Commerce now. The only reason that is in here at all is just to take care of the payments that have come to us from the trade loans we had before it was transferred to Commerce. There is no increase there.

I only recited all of these because they are the sections of the act under which the ceiling becomes involved.

Senator ROTH. I see.

Mr. KLEPPE. An interesting point that might be in your mind would be the section 8 prime contracting. This is included under our ceiling and we are shooting for \$100-million goal this year and \$175-million goal in the following fiscal year.

This is a kind of a program that can double or triple pretty fast if certain things happen. That, too, is a part of our ceiling that we have to project.

Senator ROTH. But back to your five categories. What are you anticipating for a ceiling on displaced business loans?

Mr. KLEPPE. Let's see. Displaced business programs. That is 7(b)(3). We didn't break that down because the act treats 7(a), 7(b)3, 7(e), and 8(a) as a unit.

Senator ROTH. Well let's move on to your loss experience with guarantees. How often is the Government required to pay the 90 percent?

Mr. KLEPPE. We go in and pick up problem loans every once in a while. That is the nature of our business, of course, but—

Senator ROTH. What percentage would you say?

Mr. KLEPPE. I knew you were going to ask me that and I don't have a separate figure on guarantees alone. I can give you the total

for our agency. Our total losses, all kinds of loans, cumulatively, is right around 4 percent. On guarantees it is much less, considerably less, because of the fact that you have bank participation, you have a whole lot of ingredients under the guaranteed program that are just better.

But that is our overall accumulative figure. That is the only element that comes in and involves an appropriation from Congress.

Senator ROTH. That's correct.

Mr. KLEPPE. Otherwise this legislation would not affect our deficit-spending program, our deficit situation, until such time as you consider what the losses are.

Senator ROTH. But it is a contingent liability.

Mr. KLEPPE. Oh, yes; it is the full faith and credit of the Federal Government, yes.

Senator ROTH. That brings us back to my initial question. You are asking for a substantial increase through 1974. Does your agency project 5 years ahead as to what they anticipate will be necessary in the way of new loan or guarantee authority?

Mr. KLEPPE. No; we have not gone that far in the authority projection that I know of. We thought we were doing pretty well going 2 years ahead here. This is moving so fast. Maybe you recall I came up here on an emergency basis when we had a limit of \$2.2 billion, and I asked the Congress to raise it to \$3.1 billion or we were going to be out of business. That would have happened if the Congress would not have reacted and given us that authority for \$3.1 billion.

Our projections have worked out very, very closely on that because we are going to get by this fiscal year, just about, with that ceiling of \$3.1 billion. If we don't get an increase we are going to be out of business as far as taking care of the demands of the small business community through our banking friends that furnish these funds.

Senator ROTH. Mr. Chairman, I will have further questions later.

Senator CRANSTON. Thank you, Senator Roth. Mr. Kleppe, if an application was rejected because of insufficient engineering data offered by the applicant and it might well be a valid claim, what is the SBA doing to help the applicants obtain the required engineering data?

Mr. KLEPPE. We have no facilities, no manpower, we have no way we can help with that, Senator.

Senator CRANSTON. Is it roughly correct that just on an average—we know there cannot be any precise figure on it. It depends on the nature of the problem someone has. But to hire an expert it may cost somewhere around \$200 average to review the engineering problems of his residence.

Mr. KLEPPE. I do not know. I would not have a comment on that.

Senator CRANSTON. That is what we have gathered from talking to engineers in California.

Mr. KLEPPE. Oh, is that right?

Senator CRANSTON. On the other hand, I recognize you may not have authority or funds to do this, but if you would have, it would average to \$35 per claim, as I understand it. Have you made any investigation of that?

Mr. KLEPPE. No, we have not.

Senator CRANSTON. If someone does hire an expert and with the help of the expert proves his claim is valid, does SBA have any way of reimbursing the cost of that expert?

Mr. KLEPPE. No, we have no authority for that.

Senator CRANSTON. Could that be included in the loan amount? That is, would the cost of that expert be included in the loan amount granted?

Mr. KLEPPE. I do not know quite how to answer that, Mr. Chairman.

Senator CRANSTON. If you do not want to come up with a spot answer, I can submit a few questions in writing.

Mr. KLEPPE. I would like to think about that one a little and talk to some of our people. I am just not sure about how I would answer that.

Senator CRANSTON. Would you explore that and submit your answer?

Mr. KLEPPE. Be glad to.

(The information requested follows:)

SBA has no authority to reimburse a disaster loan applicant for expenses he incurs in substantiating the amount of his damage. The Agency does have authority, however, to make such loans as we determine to be necessary and appropriate to restore the disaster victim as nearly as possible to his predisaster condition. Within this discretion, and on a case-by-case basis, an approved loan amount could include the cost of the applicant's hiring of an appraiser, architect, or engineer to assist in substantiating the amount of his loss or damage sustained.

Senator CRANSTON. Of the total 38,000 claims which are now on file there, you have indicated that 5,600 approximately are valid and will be paid. How do you categorize the remaining 32,400 claims or whatever the number is? Are they rejected or do you plan to review them further?

Mr. KLEPPE. If they have only been gone through once we are going to go through them again and probably the third time to make sure that we make every analysis we can make, and then we are going to send them back, basically because it appears to us they are cosmetic repairs and it is most difficult if not impossible for us to make a determination that they did happen because of the earthquake.

Senator CRANSTON. What you said then—

Mr. KLEPPE. I hope you understand this is a very difficult decision we have to make. But somewhere along the line under these procedures—what happened in this was we had to do something and this is what we did.

Senator CRANSTON. The way you phrased your response it sounds like you said you were going to review them and send them back. I presume you are not going to prejudge them before you send them back. It is possible you will find some that are valid.

Mr. KLEPPE. It is possible, yes. You understand, Mr. Chairman, I did not come up here to talk about disasters, so I do not have this information with me. I am drawing on my memory of my last press conference in Los Angeles, and I believe I indicated that we had 6,000 maybe 7,000, of those that we had on hand that would be all right.

I got an update figure on this just recently, and we are now ready to say we have 5,600.

So in answer to your question, there may be more, yes.

Senator CRANSTON. If you find one where you just do not have enough evidence to really make a sound judgment, when you send it back do you in any way advise the claimant of what they need to do in order to have a valid claim?

Mr. KLEPPE. Yes.

Senator CRANSTON. In order to come up with evidence that may be convincing and change your mind?

Mr. KLEPPE. Yes. And in those—

Senator CRANSTON. Do you give them any advice as to how to obtain the information, as to how to substantiate their claim if it can be?

Mr. KLEPPE. We suggest that they need engineering information that would suffice in proving to us that this damage was caused by the earthquake, but we do not recommend this or that engineer or contractor.

Senator CRANSTON. Do you tell them the name of any societies where they can turn to and ask that question?

Mr. KLEPPE. No.

Senator CRANSTON. I gather that you and I think you and some other people have suggested that perhaps the disaster loan program should not be administered by the SBA but possibly by HUD; is that correct?

Mr. KLEPPE. The making of home loans is neither a preferred task nor is it our specialty. It might be better off served by HUD. But, Mr. Chairman, I would like to add one other thing in here that I believe is a very acute problem with our disaster program, as long as you have asked me the question.

I think the \$500 repayable on the front end of a disaster loan in a Presidentially declared disaster area is bad. I think it is a pennywise and pound-foolish provision. This is what causes us the problem really. We have this \$500 on the front end that has to be repaid.

Fifty-three percent of all the loans in Los Angeles are for \$3,100 or less. Now that says they are getting \$2,500 free and they are having to pay back \$500 or \$600. We have to go to all the trouble, all the administrative costs of putting that loan on the books and that is only the beginning. Then that loan has to be put into a loan administration file and we have to try to collect it and that takes a lot of people just to service 53,000 loans, and we do not have those people.

So I think the Government is probably making a bad expenditure on that \$500 on the front end. I am hoping that something may develop along the lines of eliminating that on the front end. I am not making any statements now about the forgiveness factor; that is another question.

Senator CRANSTON. Is it your feeling on that point—I may want to come back to this other point—but on that point, is the \$2,500 forgiveness clause acting as an incentive for those with minor earthquake damage to inflate their claims? Is that your feeling?

Mr. KLEPPE. I am sure that is correct, Mr. Chairman. Proof of the fact is that 53 percent of the claims in Los Angeles are for \$3,100 or less. I do not know how many of those loans we would get if it were not for the \$2,500 forgiveness factor.

Senator CRANSTON. That is a small recovery for somebody's home that has been totally wiped out.

Mr. KLEPPE. That is correct. We do not deny that.

Senator CRANSTON. Should perhaps the route be instead to revise the law to provide for some percentage of any claim up to some maximum?

Mr. KLEPPE. I have no comment on that at this time.

Senator CRANSTON. Could you think that out and give us your comments? Not now, but in writing.

Mr. KLEPPE. You may not get a response to that too quickly, but we will think about that.

Senator CRANSTON. Getting back to this question of who should administer some part or all of the program, since a great deal of the damage in an earthquake or tornado or whatever is to homes, how would you separate the home aspect from the other aspects?

Mr. KLEPPE. From the business aspect?

Senator CRANSTON. Yes.

Mr. KLEPPE. Mr. Chairman, we consider that the business losses under a financial situation, that that is our responsibility; that is our game. We think that that fits. They are familiar with us, we are familiar with them. But the home situation is entirely different. We have no other programs whatsoever that deal with homeowners.

That was the reason why I made that suggestion when I was out in Los Angeles. I think it is a better fit for HUD from the standpoint of what it represents.

Senator CRANSTON. Do you specifically recommend that the home aspect be transferred to HUD?

Mr. KLEPPE. Yes, I think that makes sense.

Senator CRANSTON. Do you know if the White House and Governor Romney have a position on that?

Mr. KLEPPE. I am not in a position to comment for them at this time.

Senator CRANSTON. In using the investigators you have had at your disposal, have they been assigned in the San Fernando Valley and not in the other areas? Are there others on the periphery?

Mr. KLEPPE. We have what we would call investigators in every area.

Senator CRANSTON. In other parts of Los Angeles?

Mr. KLEPPE. Yes, in all disaster areas. We have had a lot of qualified people who have taken a lot of calls and taken a lot of pictures out in Los Angeles in flooded areas and everywhere else. We have just tried to substantiate as much as we can in accordance with the intent of Congress in following through on the Disaster Loan Act and we got ourselves in a situation where the public opinion, the political opinion and everything else just took a 180-degree switch.

We are trying to be smart enough to administer the thing, and it is not easy.

Senator CRANSTON. Departing from the earthquake for awhile, I may want to get back to it possibly at some further hearing, it is my understanding that during the fiscal year 1971 less than 2 percent of the loans made by the SBA in number and dollar value were direct 7(a) loans.

In fiscal year 1965 there was 300,000 direct 7(a) loans made at a dollar value of \$15.5 million.

What action are you taking to significantly increase the number of direct 7(a) loans made by SBA?

Mr. KLEPPE. Mr. Chairman, in fiscal year 1970 this agency made \$1,300,000 worth of direct 7(a) loans which in fact says that we are out of the direct lending business.

This disturbed me because I believe this agency was created primarily for the purpose of furnishing funds to small businesses who couldn't get it otherwise.

I came in in January of 1971 and we were able to upgrade that figure to \$13,800,000 for fiscal year 1971.

This year we have allocated \$37 million for direct lending which is almost three times what it was last year and which is almost 10 times what it was the previous year, so we are trying to get back into the idea of making direct loans.

I believe very strongly that there are small businesses in this Nation that cannot be financed any other way than via the direct loan route.

I also know that there is always a problem of getting sufficient appropriations to take care of anything but a very small percentage of the applicants for direct lending.

The reason is obvious, the terms are better, the interest rate is lower.

So, all I can say to you is that we are trying to get back in there and allocate funds to these States to take care of some of the more notable exceptions that need a loan.

Senator CRANSTON. Is there a minimum requirement for direct loans to minorities?

Mr. KLEPPE. No.

Senator CRANSTON. Would you explain the allocation of funds in the three categories under 7(a).

Mr. KLEPPE. You are speaking of .01, .02 and .03?

Senator CRANSTON. Yes.

Mr. KLEPPE. This is an OMB allocation to us from the standpoint of what funds are available in each category.

Category .01 is deprived areas, .02 is minority enterprise, and .03 is economic growth areas.

Senator CRANSTON. How much is allocated for the minority enterprise?

Mr. KLEPPE. Dollar-wise, direct lending?

Senator CRANSTON. Yes.

Mr. KLEPPE. Can I furnish that?

Senator CRANSTON. Would you supply that for the record.

Mr. KLEPPE. Yes.

(The information requested follows:)

The allocations for minority enterprise, for both direct and immediate participation loans under section 7(a), are as follows: Fiscal year 1971, \$18.9 million (actual); fiscal year 1972, \$42.0 million (current budget plan); and fiscal year 1973, \$55.0 million (projected).

Senator CRANSTON. Is it true SBA has encountered loan loss problems?

Mr. KLEPPE. I will cite some facts and I will let you decide.

Under economic opportunity loans, I would like to call your attention if I could to one figure called a trouble rate. Now, the trouble rate to us is anything 60 days or more delinquent and/or in liquidation and/or in litigation and the combined total for E.O.L. loans is 24.2 percent as of the end of January 1972.

So, I just give it to you as a fact.

Some say that is too high, some say that is too low. We won't debate or argue that question.

Within our own organization we address ourselves to the fact that we always try to collect back funds that are loaned by this agency because it is a legitimate loan. And, obviously, we don't always succeed.

Senator CRANSTON. What is the administration's position on raising the loan limit under section 402 E.O.L. loans beyond the \$25,000 limitation?

Mr. KLEPPE. We have taken no position on that, Mr. Chairman.

Senator CRANSTON. In 1971 in the Select Committee on Small Business hearings you stated that "there are indications that SBA would like some changes in the loan authority for E.O.L. loans."

Would you explain that statement?

Mr. KLEPPE. I think I made reference to the fact that there were reasons to substantiate an increase from \$25,000 on up to possibly \$50,000. The thinking there is very obvious.

There are many instances when you do a company a disservice if you lend them \$25,000 when they need \$35,000 to really function.

We were limited, of course. That is what I was referring to.

Senator CRANSTON. But you thought then and presumably think now that such an increase would be helpful.

Mr. KLEPPE. I think it has merit. That is about as far as I went then and that is about as far as I will go now.

Senator CRANSTON. What is being done to help businessmen, what management assistance is being provided as required by the Economic Opportunity Act of 1964?

Mr. KLEPPE. Certainly not as much as I would like to see. We have utilized funds under 406 for management assistance for our borrowers.

We have management assistance in our own organization; we have had to restructure and reclassify some of our management assistance people and put them directly under loan administration because we believe that the top priority for us in offering management assistance must be directed to our borrowers.

As long as we don't have the latitude and the extensive numbers of people to serve the small business community on a one-on-one basis, we believe we must first of all address all the management and technical help that we can give to our borrowers.

Now, when I say "our borrowers," I am talking also about 8(a) contract people.

Senator CRANSTON. Has a decision been made by you to discontinue the 406 grant program?

Mr. KLEPPE. Primarily, yes. We will work on a call-contract basis which will primarily refer to areas of management and technical assistance.

Senator CRANSTON. In a statement you issued February 24, 1972, you highly praised the success of these programs. You indicated that \$76,281,010 in loans had been made under this program with an extremely low failure rate of only 1 to 2 percent.

You also stated that for each SBA dollar spent in grants nearly \$30 was returned to the minority businessman.

In the light of that, would you explain to us why a program that is giving the taxpayer that sort of return is being discontinued?

Mr. KLEPPE. It is not being discontinued, Mr. Chairman. When you start talking about duplication in government, I think here you are

talking about one because the OMBE funds created last year are going to pick up a great deal of that slack, I am sure.

I am frankly proud from the standpoint of our agency in having been able to use a relatively small amount of money, \$5 million, that has created that kind of a multiplier factor in the minority community, but more importantly in what we call the small business community.

Senator CRANSTON. Presently, is OMBE carrying on the grant program?

Mr. KLEPPE. OMBE is going to carry on the grant program.

Senator CRANSTON. What has it done up to this moment?

Mr. KLEPPE. It is a brandnew situation as far as OMBE is concerned. They received \$40 million to just get started and get into it. But it will be along the lines of management assistance.

Senator CRANSTON. Is the 406 program being specifically discontinued?

Mr. KLEPPE. No, 406 is not going to be stopped. We are going to ask for \$5 million. But on the call-contract basis instead of the grant basis.

Senator CRANSTON. Isn't the call-contract program more expensive than the grant program?

Mr. KLEPPE. No, I think you can make comments either way about the grant program or the call-contract program. We have had some examples that we are not too happy with under our call-contract basis and we are going to change.

We have also had situations under our grant program that haven't been of help to business that we would change, too.

We believe that this is a very good expenditure of Federal funds for the purpose intended and we are going to address ourselves to using it under the call-contract route.

Senator CRANSTON. Your office indicated in response to an inquiry, that the grant program costs about \$60 a day as opposed to the call program cost of \$150 to \$200 a day.

Mr. KLEPPE. Yes, and we are going to make some changes, I assure you. You are talking about costs now, you are not relating it to the results. You must make a relationship. But we have some things we found out we want to improve and we think we can, but it will be via the call-contract route.

Senator CRANSTON. The call-contract program doesn't have any successful statistics to compare with the grant program. You are therefore looking into the future without knowing exactly what is going to happen in terms of expense with the call-contract method.

Mr. KLEPPE. It is hard to do, I agree with you.

Mr. Chairman, I am sure you know that basically SBA is not a grant agency. We have allocated \$3 million of the \$5 million that we have had for the grant program and it has worked out very well.

Now, it is that portion of the 406 program that will probably be considered by OMBE and we will continue with the call-contract route.

Senator CRANSTON. Senator Roth.

Senator ROTH. I would like to go back to your figure of roughly a 24-percent loss in your loan program under the economic opportunity program.

I am concerned that Congress may not be able to judge whether or not a given program is being effective. How do you compare its efficiency with other programs or how do you evaluate internally the degree to which any one program is meeting its objectives?

I wonder what kind of analysis you make of this 24-percent trouble rate to determine whether these are errors that can be avoided in the future. Can you determine where the emphasis should be made in making future loans or where the mistakes in the past have been made?

Mr. KLEPPE. Two comments I would make in regard to that, Senator Roth; one is we know the corrections and improvements that can be made on the front end. That is at the time the loan is made. We have some standards in some of our country on EOL loans that we have plugged the holes on, bad loans were made and they were very obviously bad. There is a difference between making a bad loan and taking a calculated risk that goes sour. There is a difference. If you have been in the lending business I am sure you would know that.

The other thing that is hitting us very hard, that is the sheer numbers of people that we have available to address ourselves to our loan administration section. We have 210,000 loans in our loan portfolio today and there is just a limit to how much time we have to spend in servicing the loans. Anybody who has been in the lending business would know that your greatest trouble happens right shortly after that loan is made, the first 90 days, the first year, that is when the troubles ensue. We just haven't had the manpower to give them management assistance they probably need and therefore to help them be successful.

So these are two questions that are asked all the time and they are the problems that we face. But I must add to you that even though your questions are addressing themselves to our EOL loans that if you look at our overall portfolio that I talk about, 210,000 loans, our total trouble rate for that whole shooting match is 9.4 percent.

Senator ROTH. I am not passing judgment on whether the 24 percent is good or bad. The basic thrust of my question is how do we evaluate its significance? I don't think the figure in and of itself tells either of us much. The question I ask is what evaluation systems do you have?

I have directed a number of questions to your agency by letter recently and I just would like to know what procedures do you have in your agency for making systematic analyses of your many programs.

Mr. KLEPPE. I can't tell you how many jobs are created by those loans but I mean it is substantial. Very substantial. One of the greatest things that the SBA programers do is create jobs and sustain jobs that are already there. But I cannot tell you under the EOL program how many jobs are created because of our financial assistance. But it is a huge figure. So that is one way of evaluation but how are you going to specifically pinpoint those jobs under that program to the financial assistance that we give them—that could be argued, I am sure. I don't know what other thoughts you might have on evaluation that you would be looking for.

Senator ROTH. You mentioned the shortage of manpower and now you are asking for considerable increase in your loan authority. What do you think this is going to require in expanded numbers of personnel in your agency?

Mr. KLEPPE. For this 2-year period—I haven't got numbers to give you—but it is going to mean that we are going to have a good many more loan officers to take care of it, you bet.

Senator ROTH. Could you be a bit more specific?

Mr. KLEPPE. In how many?

Senator ROTH. Yes.

Mr. KLEPPE. No. We are going to try to meet our objectives of our loan level in fiscal year 1973 with the force that we have. When we talk about going beyond that, we would have to have somewhere between an additional 100 to 200 loan officers to take care of this.

Senator ROTH. Well, does that double your current level?

Mr. KLEPPE. Oh, no. I think we have 700-some loan officers.

Senator ROTH. What would you expect the additional cost will be to hire additional people to manage this increased authority?

Mr. KLEPPE. I don't know, Senator Roth. Would you like to have me submit those?

Senator ROTH. Yes; both what you expect in expanded manpower and the additional cost.

(The information requested follows:)

In order to carry out the program levels requested for fiscal year 1973, we had requested an additional 271 employees, at an approximate cost of \$3 million. That request was denied by the Office of Management and Budget. Nonetheless, we are making every effort to achieve the fiscal year 1973 goals with the resources available to us. However, we intend again to request additional manpower in this area for fiscal year 1974.

Senator ROTH. There is one other area I would like to touch upon. Would you explain to me the appeal procedures followed by the Small Business Administration in determining whether or not a firm falls within your definition of small business?

Mr. KLEPPE. Procedures?

Senator ROTH. Yes.

Mr. KLEPPE. Well, every industry has a size standard that has been set over a period of years by SBA. It is within our legislative authority to establish these size standards. Some fall in category of number of employees, some dollars worth of sales volume, and in some instances there are others. But those are the two basic ones. Industries are different.

Now, if an industry, if a business that comes in and applies for a loan is above that level then he is not eligible for our services nor can he bid on set-asides which are Government procurement for small business. If he wants to take issue with that we have a size appeals board in our agency to consider that man's application and make a determination as to whether he is large or is small by our size standard.

Senator ROTH. How does this size appeal board function?

Mr. KLEPPE. How do they function?

Senator ROTH. Yes.

Mr. KLEPPE. They will take any application from somebody that considers he is being injured by virtue of a decision that he is large. He can appeal to them and say I am small because of thus and so. They will then go into all the facts involved and make a recommendation.

Senator ROTH. What type of a hearing do they hold?

Mr. KLEPPE. They can request an oral hearing or it can be written documentation that would be received from the applicant. It comes in either way.

Senator ROTH. Can they insist on a public hearing with the right to cross-examine?

Mr. KLEPPE. May I call on counsel to answer this question?

Mr. KNEBEL. Senator Roth, any aggrieved contractual applicant, or for that matter loan applicant, can indeed request and will be granted oral hearing if the request is made timely. By timely I mean, of course, within the time frame set forth in the regulations.

Now, during the hearing itself it is not a strict Administrative Procedures Act-type hearing. We do adhere generally to the principles of evidence but we do not necessarily swear witnesses. In fact I can't recall of a case where a witness was sworn. There is cross-examination and then the board takes all the evidence and writes an opinion.

Senator ROTH. Does one have the right to call witnesses?

Mr. KNEBEL. Absolutely. Yes, sir.

Senator ROTH. And there is always a public hearing available?

Mr. KNEBEL. Again, if the request is timely made.

Senator ROTH. What do you mean by that?

Mr. KNEBEL. Within the time period set forth in the size regulations.

Senator ROTH. I would like to have a copy of those regulations.

Mr. KNEBEL. We would be glad to provide them.

(The information follows:)

PART 121
SBA RULES AND REGULATIONS

Filing Instructions: Remove and destroy all of Part 121 (Rev. 10) and all amendments (1 through 11). Insert this new Part 121 immediately following Part 120 and amendments thereto.

This new Revision 11 rescinds Revision 10, including Amendments 1 through 11.

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[Rev. 11]

PART 121—SMALL BUSINESS SIZE STANDARDS

Revision of Small Business Size Standards Regulation Revision 11 of Part 121 rescinds Revision 10, including Amendments 1 through 11 thereof, of the Code of Federal Regulations. In addition to incorporating the amendments to Revision 10, this revision revises § 121.3-4, Size Determinations to give SBA regional directors or their delegates additional authority to make size determinations for the purpose of the Government Timber Sales Program. Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations is hereby revised to read as follows:

- Sec.
121.3 Statutory provisions.
121.3-1 Purpose and method of establishing size standards.
121.3-2 Definition of terms used in this part.
121.3-3 Organization—size functions.
121.3-4 Size determinations.
121.3-5 Protest of small business status.
121.3-6 Appeals.
121.3-7 Differentials.
121.3-8 Definition of small business for Government procurement.
121.3-9 Definition of small business for sales of Government property.
121.3-10 Definition of small business for SBA loans.
121.3-11 Definition of small business for assistance by small business investment companies or by development companies.
121.3-12 Definition of small business Government subcontractors.

- 121.3-13 Definition of small business for the purpose of lease guarantee.
121.3-14 Interpretations.

AUTHORITY: The provisions of this Part 121 issued under Public Law 85-536, sec. 5(b)6, 72 Stat. 385.

§ 121.3 Statutory provisions.

- (a) Small Business Act, as amended.

Sec. 3. For the purpose of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others. Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

* * * * *
Sec. 8(b). It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

* * * * *
(4) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaged in the disposal of Fed-

eral property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) Small Business Investment Act of 1958, as amended.

SEC. 103. As used in this Act—

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(b) The term "small business concern" shall have the same meaning as in the "Small Business Act."

§ 121.3-1 Purpose and method of establishing size standards.

(a) Purpose. This part defines "small business concerns" and establishes standards, criteria, and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act") and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

(b) Method of establishing size standards—(1) Use of Standard Industrial Classification Manual. The Standard Industrial Classification (SIC) Manual, as amended, prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, will be used by SBA as a guide in defining industries. Its use therefore is advisory and not mandatory.

(2) Size standards policy. (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.

(ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive.

(iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella.

(iv) It is the Small Business Administration view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard, should compete for Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances

small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance.

(3) Factors in formulating size standards. The following factors shall be considered in formulating industry size standards:

(i) Concentration of output; that is, the portion of the total output of an industry which is accounted for by a limited number of companies.

(ii) Coverage ratio; that is, the ratio of the industry's shipments of its primary products, to the total shipments by all industries of the primary products of the industry in question.

(iii) Specialization ratio; that is, the ratio of the industry's shipments of its primary products to its total shipments of primary and secondary products.

(iv) The total number of concerns in the industry.

(v) The size of industry leaders.

(vi) The SBA program for which the size standard is established.

In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(4) Product classification. For size standards purposes, a product or service shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors including:

(i) Alphabetic indices published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, Bureau of the Census, and the Business and Defense Services Administration.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such products.

A product or service shall be classified in the industry whose definition best describes the principal nature of the product or service being procured. The end use of a product does not govern the industry into which it is to be classified. In a borderline situation the product or service shall be classified in the industry whose size standard would best serve to accomplish the purposes of the Small Business Act. When a procurement is for two or more items with different size standards a bidder must qualify as a small business under the

definition of a small business applicable to any item on which it bids. If a multi-item procurement requires the successful bidder to deliver all items and/or perform all services being procured the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(5) Product classification decision. The SBA Regional Director or his delegate of the SBA Region in which the principal office of the applicant, not including its affiliates, is located, shall determine the appropriate SIC classification, except that for procurement purposes the determination shall be made by the official specified in § 121.3-8, and for lease guarantee reinsurance purposes the determination shall be made by the Associate Administrator for Financial Assistance. Such determination shall be subject to appeal in the manner provided in § 121.3-6.

§ 121.3-2 Definition of terms used in this part.

(a) Affiliates: Concerns are affiliates of each other when either directly or indirectly (1) one concern (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control the other, or (2) a third party or parties (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: *Provided, however*, That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure. Where a concern is a subcontractor pursuant to section 8(a)(2) of the Small Business Act and, in connection therewith, is the subject of a Divestiture Agreement approved by SBA for the benefit of socially or economically disadvantaged individuals, the receipts, employment, and other factors of the concern attributable to the section 8(a)(2) subcontract shall not be included in determining the size of either concern during the term of such divestiture agreement. Other contracts and business of such subcontractor may also be excluded in determining the size if, in the judgment of SBA, substantial beneficiaries of such other contracts and business will be the socially or economically disadvantaged individuals in question.

(b) "Annual receipts" means the gross income (less returns and allowances,

sales of fixed assets and intersaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than a year its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. Except as set forth in § 121.3-10, if a concern has acquired an affiliate during the applicable accounting period it is necessary in computing the applicant's annual receipts, to include the affiliates' receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Appeal" means a written communication addressed to the Size Appeals Board requesting it to review a determination relating to a size matter made by a district director or his delegate, or by a Contracting Officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which:

(1) Is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment," and such classification has been listed in that Department's publication "Area Labor Market Trends" continuously from September 15, 1961, until a size determination is made; or

(2) Is individually certified by the Department of Labor as an "Area of Substantial Unemployment" and has been eligible for such certification continuously since September 15, 1961. If an area has been removed from the publication, "Area Labor Market Trends," or if an area becomes ineligible for certification at any time, such area is excluded from the above definition and cannot be reinstated for the purpose of size determinations unless it is designated as a Redevelopment Area by the Department of Commerce. (See paragraph (v) of this section.)

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more for the family; and (3) household lines services which may include but are not and sales within any one of the preceding janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire preven-

tion services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance: *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity," means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b) (7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit with a place of business located in the United States, including, but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining a profit which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing twenty-five (25) or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio, and television sets; (2) a general line of apparel and dry goods; *Provided, however,* That merchandise lines do not exceed eighty percent (80%) of the concern's total sales and the aggregate of such merchandise

lines account for at least fifty percent (50%) of the concern's total sales.

(m) "Forest products industry" as used in § 121.3-9(b) means logging; wood preserving, and the manufacture of lumber and wood-related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood-related products are the principal raw material.

(n) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the centerline of a joint partition and from outside wall faces.

(o) "Hospital" means a health facility duly licensed as a hospital providing in-patient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owner, stockholders, or members.

(p) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget (now office of Management and Budget), Executive Office of the President.

(q) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(r) "Nonmanufacture" means any concern which in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(s) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(t) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in

/existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month. If a concern has acquired an affiliate during the applicable accounting period it is necessary in computing the applicant's number of employees, to include the affiliates' number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(u) "Protest" means a statement in writing from any bidder or offeror on a particular procurement or disposal (or from any other party interested therein), alleging that another bidder or offeror on such procurement is not a small business concern. Such statement shall contain the basis for the protest, together with specific detailed evidence in support of the protestant's claim. A protest received after the time limits set forth in § 121.3-5(a) shall be acted on but such determination shall not apply to the procurement in question.

(v) "Redevelopment area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "redevelopment area" in accordance with the Public Works and Economic Development Act of 1965 (Public Law 89-136, sec. 401, 75 Stat. 48).

(w) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(x) "Size determination" means an SBA ruling, in writing, that a concern is or is not, or was or was not, a small business within the meaning of this part. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in this part.

(y) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.3-3 Organization—size functions.

The Assistant Administrator for Administration shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or

requesting amendments or rescission of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

§ 121.3-4 Size determinations.

Original size determinations shall be made by the Regional Director, or his delegate, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Financial Assistance. The Regional Director, or his delegate, or the Associate Administrator for Financial Assistance, promptly shall notify, in writing by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall be final unless appealed in the manner provided in § 121.3-6. For the purpose of Government procurements a size determination shall be made only in the event of a protest pursuant to § 121.3-5, a request for a redetermination pursuant to § 121.3-14(e), a request for a Certificate of Competency, or on request by the U.S. General Accounting Office, provided however that a Regional Director or his delegate may, whenever he deems such action necessary, determine the size status of a concern for the purpose of the Government Timber Sales Program.

§ 121.3-5 Protest of small business status.

(a) How to protest: Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular procurement or disposal. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement involved. Such protest must be filed prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed by any other offeror or other interested party within five (5) days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. *Provided, however,* That a protest received after such time shall be deemed to be timely for the purpose of the procurement in question, if, in the case of mailed protest, such protest is sent by registered or certified mail and the postmark thereon indicates that the protest would have been delivered within this time limit but for delays beyond the control of the protestant or, in the case of telegraphed protests, the telegram date and time line indicate that the protest would have been delivered within this time limit but for delays beyond the control of the protestant. Any contracting officer who receives a protest shall promptly forward

such protest to the SBA district office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement by filing a protest with the SBA district office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement in question whether filed before or after award.

(b) Notification of protest: Upon receipt of such protest, the SBA district director or his delegate shall immediately notify the Contracting Officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The district director or his delegate shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested. Such bidder must, within three (3) working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, and must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. If such bidder or offeror does not submit the completed SBA Form 355 within the filing period provided above, or within any additional period of time granted by SBA for cause, SBA will rule the protested concern is other than a small business.

(c) Notification of determination: After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the Contracting Officer, the protestant, and the protested bidder or offeror of its decision within 10 working days if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

§ 121.3-6 Appeals.

(a) Organization. The Size Appeals Board shall review appeals from size determinations made pursuant to §§ 121.3-4 and 121.3-5 and from product classifications made pursuant to §§ 121.3-3 and 121.3-10 and shall make final decisions as to whether such determinations or classifications should be affirmed, reversed or modified. Size Appeals Board proceedings are essentially factfinding and nonadversary in nature. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties.

(1) The Size Appeals Board shall consist of five members, to wit: The Deputy Administrator (Chairman), the Associate Administrator for Procurement and Management Assistance (Vice Chairman), the Associate Administrator for Financial Assistance, the Assistant Administrator for Planning, Research and Analysis, and the Associate Administrator for Investment.

(2) Each member of the Size Appeals Board shall, in writing, designate one or more alternates to serve in his stead in the event of absence or disability. Each member or his alternate shall have one vote, except that the Chairman, or the Vice Chairman acting in his stead, shall vote only in the event of a tie.

(b) *Method of appeal*—(1) *Who may appeal.* An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern pursuant to § 121.3-5 and whose protest has been denied by a Regional Director or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of a Regional Director or his delegatee or by the Associate Administrator for Financial Assistance pursuant to §§ 121.3-4 and 121.3-5;

(iii) Any concern or other interested party which has been adversely affected by a decision of a Contracting Officer regarding product classification pursuant to § 121.3-4; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) *Where to appeal.* Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Time for appeal.* (i) An appeal from a size determination or product classification by a Regional Director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement may be taken within five (5) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a Regional Director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the fifth day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(ii) An appeal from a product classification determination by a Contracting Officer may be taken: (a) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or (b) not less than five (5) days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or

quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal under subdivisions (i) and (ii) of this subparagraph shall be determined by the time of receipt of the appeal by the Size Appeals Board; *Provided, however,* That an appeal received after such time limits have expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) *Notice of appeal.* No particular form is prescribed for the notice of appeal. However, the appellant shall submit to the Board an original and four legible copies of such notice and, to avoid time-consuming correspondence, the notice should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of a Regional Director, or his delegatee, the Contracting Officer or the Associate Administrator for Financial Assistance is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(vi) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate Regional Director or his delegates and to the Contracting Officer (if a pending procurement is involved). If the appellant is not the concern whose size status is in question, the Board shall also send a copy of the notice to such concern. The Board shall notify all known interested parties that the appeal has been filed. The Board in its discretion may also provide any of such interested parties with copies of applicant's Notice of Appeal, or parts thereof, when the Board determines that this would be in the interest of fairness or would assist it in the performance of its functions.

(d) *Statement of interested parties.* After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with four legible copies thereof, as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Such statements and

supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within five (5) days of the receipt of appropriate notification of appeal or other action in the proceeding unless an extension is for cause granted by the Chairman of the Size Appeals Board. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements and appropriate evidence submitted in connection with the appeal or a reconsideration thereof to such appellant.

(e) *Consideration by the Size Appeals Board.* (1) The Size Appeals Board shall consider the appeal on the written submission of the parties, the Board may also, in its discretion, conduct an oral inquiry. After consideration of all relevant information, the Board shall promptly render a decision which shall state the reason for such decision.

(2) *Proceedures in oral inquiries.* In considering size appeals, and in reconsidering size appeals decisions, the Size Appeals Board may hold an oral inquiry to assist it in arriving at facts necessary in deciding the appeal. The following rules shall govern such oral inquiries:

(i) Oral inquiries may be held by the Size Appeals Board upon the request of any party to a size appeal or by the Board on its own motion. The Board will, in its discretion, determine whether an oral inquiry will be of assistance in its determination of a size appeal. The Board shall inform the party making a request for oral inquiry whether its request is granted. If the Board grants the request for an oral inquiry, it will so notify all other interested parties.

(ii) Oral inquiries held by the Board are investigative in nature and not adversarial. Such inquiries shall be conducted informally in a manner which will facilitate the Board's factfinding function and insure fairness to all participants.

(iii) Whenever the Board permits the appearance of two or more parties before it in an oral inquiry, cross-examination shall not be permitted between or among such parties; however, any party appearing in such oral inquiry may suggest questions for the Board to direct to other parties which may assist the Board in its determination of relevant facts.

(f) *Decision of the Size Appeals Board.* The decision of the Size Appeals Board shall be predicated upon the entire record, and it shall state in writing the basis for its findings and conclusions. The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Board's decision together with the reasons therefor.

(g) *Reconsiderations.* (1) Following any decision in a size appeals case, an interested party, within no more than five (5) business days following the decision, may petition the Board for reconsideration upon presentation of appropriate justification therefor. The petition for reconsideration to the Board may be in any form, with an original and

four copies. The Board will notify interested parties that a petition for reconsideration has been received.

(2) The Board shall consider the petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Board, in its discretion, deems necessary.

(3) Grounds for reconsideration. Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant information not previously considered by the Board or relevant information not previously available to any of the parties involved;

(iii) When a request for reconsideration is made by any of the interested parties, such requesting party must demonstrate to the Board that the grounds for reconsideration involve facts or information which were not previously presented to the Board through no fault or omission of such party.

(4) If the Board denies the request for reconsideration, it shall notify all parties. If the request for reconsideration is granted, the Board shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its factfinding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. The decision of the Board shall constitute the final administrative remedy afforded by this Agency

§ 121.3-7 Differentials.

(a) Alaska: If an applicant for a size determination is a concern which has fifty percent (50%) or more of its annual sales or receipts attributable to business activity within Alaska then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by twenty-five percent (25%) of the amount set forth therein.

(b) Substantial or persistent unemployment areas; areas of concentrated unemployment or underemployment; certified eligible concerns; and redevelopment areas—(1) Assistance under sections 7(a) and 8(a) of the Small Business Act. Notwithstanding any other provision of this part, the applicable size standards for the purposes of assistance under sections 7(a) and 8(a) of the Act are increased by twenty-five percent (25%) whenever the concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Underemployment or Redevelopment Area as defined in § 121.3-2 (d) and (v) or is designated as a Certified Eligible concern by the Department of Labor

and agrees to use the assistance within such area or, if it does not maintain a plant, facility, or other business establishment within such area, agrees to utilize the assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) Small business investment companies and development companies. Notwithstanding any other provision of this part, the size standard for a small business concern receiving assistance from a small business investment company or receiving assistance from a development company in connection with section 501 or section 502 loan is increased by twenty-five percent (25%) whenever such concern qualifies for a similar differential under subparagraph (1) of this paragraph.

(3) Government procurement assistance, sales of Government property and Government subcontracting. Except as is provided in subparagraphs (1) and (2) of this paragraph, this paragraph is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property or Government subcontracting.

§ 121.3-8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offerer, the number of employees, annual receipts, or other applicable standards of the bidder or offerer and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the Contracting Officer shall accept the self-certification at face value for the particular procurement involved. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3-5. If a procurement calls for more than one item and the bidder can bid on any or all items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the

greatest percentage of the total contract value. The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard (number of employees, average annual receipts, etc.) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in § 121.3-6. If no standard for an industry, field of operation or activity (e.g., animal specialty; fin fish; management-logistics support) to be performed outside of the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia has been set forth in this section, a concern bidding on a Government contract is a small business, if including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and has 500 employees or less.

(a) *Construction.* Any concern bidding on a contract for work which is classified in Division C, Contract Construction of the Standard Industrial Classification Manual, as amended, prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$7½ million.

(2) Small if it is bidding on a contract for dredging and its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided*, That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than five percent (5%) of the value of all

such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than ten percent (10%) of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided*, That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than fifty percent (50%) of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than five percent (5%) of the total value of all such manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than ten percent (10%) of the total value of such product manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but it is applicable to all bidders or offerers. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(c) *Nonmanufacturing.* Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2) (i) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer whose products are manufactured or produced in the United States; *Provided, however,* If the goods to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter

for knitwear), and if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding, mercerizing, spinning, throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application.

(d) *Research, development, and testing.* Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$1 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$3 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(5) Any concern bidding on a contract for marine cargo handling services is classified as small if its annual receipts do not exceed \$5 million for the preceding three (3) fiscal years.

(6) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small

if its average annual receipts for its preceding three (3) fiscal years do not exceed \$6 million.

(7) Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$4 million.

(8) (i) Any concern bidding on a contract for laundry services including linen supply, diaper services, and industrial laundering is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$3 million.

(ii) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified as small if its average annual receipts for the preceding three (3) fiscal years do not exceed \$1 million.

(9) Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$3 million.

(10) Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(11) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(12) Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$3 million.

(13) Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$3 million.

(14) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(f) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,500 persons.

(3) As small if it is bidding on a contract for either trucking (local and long-distance), warehousing, packing, and crating and/or freight forwarding, and its annual receipts do not exceed \$5 million.

(g) *Refined petroleum products.* Any concern bidding on a contract for a refined petroleum product other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; is classified as small if (1)

(i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks; *Provided, however*, That a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (iii); *And, provided further*, That the exchange of products for products to be delivered to the Government, will be completed within 90 days after the expiration of the delivery period under the Government contract; and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District pursuant to Schedule G of Part 121, as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph.

§ 121.3-9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field operation, and can further qualify under the following criteria.

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons;

Provided, however, That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude oil or bona fide stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other forms of processing agreement, with the same effect as though such facilities had been leased.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual receipts for its preceding three (3) fiscal years do not exceed \$5 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual sales or annual receipts for its preceding three (3) fiscal years do not exceed \$25 million.

(b) *Sales of Government-owned timber.* (1) In connection with sale of Government-owned timber a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than thirty percent (30%) of such timber or, in the case of timber from certain geographical areas set forth in Schedule E of this part, more than the percentage established therein for such area.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

§ 121.3-10 Definition of small business for SBA loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below. A concern which is a small business under § 121.3-8 which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry field of operation, or activity has been set forth in this section, a concern seeking determination shall submit SBA Form 355 to the Assistant Administrator for Administration, Washington, D.C. 20416. If an applicant for an SBA loan has one or more affiliates primarily engaged in industries different than that of the applicant, the applicant's size status shall be determined by computing the percentage that the applicant's size is of the size standard for the industry in which it is primarily engaged and adding it to the percentage that the size of each of its affiliates is of the size standard for the industry in which each affiliate is primarily engaged. In order for the applicant to be eligible under this revision, the total of such percentages must not exceed one hundred percent (100%). A concern's primary industry is that which produced the greatest percentage of gross receipts for its past fiscal year.

(a) *Construction.* Any construction concern is small if its average annual receipts do not exceed \$5 million for the preceding three (3) fiscal years.

(b) *Manufacturing.* Any manufacturing concern is classified:

(1) As small if its number of employees does not exceed 250 persons;

(2) As large if its number of employees exceeds 1,500 persons;

(3) Either as small or large depending on its industry and in accordance with the employment size standards set forth in Schedule "A" of this part, if its number of employees exceeds 250 persons, but not more than 1,500 persons;

(4) As small if it is primarily engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Employment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(c) *Retail.* (1) Any retailing concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule D of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule D of this part and its annual sales do not exceed \$1 million.

(d) *Services.* Any service concern is classified:

(1) As small if its annual receipts do not exceed \$1 million;

(2) As small if it is primarily engaged in the hotel and motel industry and its annual receipts do not exceed \$2 million;

(3) As small if it is primarily engaged in the power laundry industry and its annual receipts do not exceed \$2 million;

(4) As small if it is primarily engaged in the trailer court and parks industry and its annual receipts do not exceed \$1 million. *Provided*, That a minimum of fifty percent (50%) of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of thirty (30) days.

(5) As small if it is primarily engaged in owning and operating a hospital and its capacity does not exceed 150 beds (excluding cribs and bassinets);

(6) As small if it is primarily engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed \$1 million;

(7) As small if it is primarily engaged in owning and operating a medical or dental laboratory and (i) it is operated in connection with an eligible proprietary hospital or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed \$1 million;

(8) As small if it is primarily engaged in the motion picture production industry and its annual receipts do not exceed \$5 million;

(9) As small if it is primarily engaged in the motion picture services industry and its annual receipts do not exceed \$5 million;

(10) As small if it is primarily engaged in rendering engineering services and its annual receipts do not exceed \$2.5 million.

(e) *Shopping centers.* (1) Any concern primarily engaged in operating shopping centers is small if (i) it does not have assets exceeding \$5 million, (ii) it does not have net worth in excess of \$2½ million, (iii) it does not have an average net income, after Federal Income Taxes, for the preceding two (2) fiscal years in excess of \$250,000 (average net income to be computed without benefit of any carryover loss), and (iv) it does not lease more than twenty-five percent (25%) of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not be considered affiliated with their tenants merely because of lease agreements.

(f) *Transportation and warehousing.* Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed \$1 million;

(2) As small if it is primarily engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain and it does not

have more than 1 million bushels capacity in owned and leased facilities, and its annual receipts do not exceed \$1 million;

(4) As small if it is primarily engaged in trucking, warehousing, packing, and crating and/or freight forwarding and its annual receipts do not exceed \$5 million.

(g) *Wholesale.* (1) Any wholesaling concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule C of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule C of this part and its annual receipts do not exceed \$5 million.

(2) Any concern primarily engaged in wholesaling, but also engaged in manufacturing, is not a "small business concern" unless it qualifies under both the manufacturing and wholesaling standards.

(h) *Custom livestock feeding.* Any concern primarily engaged in custom livestock feeding is classified as small if its annual receipts do not exceed \$2 million.

§ 121.3-11 Definition of small business for assistance by small business investment companies or by development companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies is one which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding \$7½ million, does not have net worth in excess of \$2½ million, and does not have an average net income, after Federal Income Taxes, for the preceding 2 years in excess of \$250,000 (average net income to be computed without benefit of any carryover loss); or

(b) Qualifies as a small business concern under § 121.3-10.

§ 121.3-12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of \$2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding \$2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3-8. *Provided, however*, That a nonmanufacturer is considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

§ 121.3-13 Definition of small business for the purpose of lease guarantee.

A small business concern for the purpose of lease guarantee is a concern that

qualifies as a small business under § 121.3-11.

§ 121.3-14 Interpretations.

(a) [Reserved]

(b) *Section 121.3-9(b), "Sales of Government-owned timber."* Any concern which self-certifies as a small business concern for the purpose of the sale of Government-owned timber is expected to maintain sufficient documentary evidence to show that it did so in good faith. This means that a concern which sells more than 30 percent (30%) of the purchased timber will have to maintain the names and addresses of the concerns to whom the timber is sold and the size status of such concerns, unless an exemption has been granted on sales of mixed stumpage of hardwood and softwood species. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber and timber by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the timber into lumber or timbers.

(c) *Section 121.3-2(a), "Affiliates"*—(1) *Nature of Control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

EXAMPLE. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party or parties with the power to control.

(2) *Meaning of "party or parties."* The term "party or parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(ii) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls, or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each own, control or have the power to control less than 50 percent of the voting stock of a concern and such minority blocks are

(a) equal or substantially equal in size, and (b) large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(ii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

EXAMPLE. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock but no officer or director has a block sufficient to give him control or the power to control and remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(4) *Stock options, convertible debentures, and agreements to merge.* Stock options and convertible debentures exercisable at the time of, or within a relatively short time after a size determination, and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised prior to the date of the determination.

EXAMPLE. If, on the date of the determination, Company "A" holds an option to purchase a controlling interest in Company "B" and such option can be exercised at any time by Company "A", the situation is treated as though Company "A" had exercised its rights and had become owner of a controlling interest in Company "B" prior to the determination. Further, if, as of the date of a determination, Company "A" has entered into an agreement to merge with Company "B" in the future, the situation is treated as though the merger had taken place prior to the date of the determination.

(5) *Voting trusts.* If the purpose of a voting trust or similar agreement is to separate voting power from beneficial ownership of voting stock, for the purpose of shifting control of, or the power to control a concern, in order that such concern or another concern may qualify as a small business within the size regulation, such voting trust shall not be considered valid for this purpose, regardless of whether the trust is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is a valid trust within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern is considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude

that under the circumstances, such concern is directing or influencing, or has the power to direct or influence the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space, and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—(1) Definition of a joint venture for size determination purposes.* A joint venture, for size determination purposes, is an association of persons or concerns with interest in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single business venture, such as a Government contract, for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(ii) *Joint ventures—financial assistance.* For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(iii) *Joint venture—procurement assistance.* Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint venturers since they have no power to control its performance of the contract being bid on. Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as

distinguished from its share of the profits of such venture).

(iv) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(d) *Section 121.3-3, Definition of small business for Government procurement—(1) Sawmills.* For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern.

(2) *Oxygen converters.* For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen with or without additives, is a nonmanufacturer of the gaseous oxygen and therefore must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(e) *Section 121.3-8.* Section 121.3-8 provides that, in the submission of a bid or proposal on a Government procurement, a concern which meets the size standards criteria provided in § 121.3-8, may represent that it is a small business, provided further, however, that a concern which has been determined by SEA to be ineligible as a small business under a particular size standard: (1) Shall, if it has self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), immediately notify the contracting officer of such adverse size determination and, (2) shall not thereafter self-certify on a procurement subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management or contractual relations, and has been determined eligible as a small business under such size standards by either the regional office which issued the adverse determination or the Small Business Size Appeals Board.

(f) *Section 121.3-4 "Application for small business size status determination."* Contracting officers, in order to determine whether to set particular contracts aside for exclusive award to small

business concerns or whether to send invitations for bids to particular concerns, may require information from SBA concerning the small business size status of such concerns and be unable to wait for a formal small business size determination. In such cases, informal advice or information may be given based on the best evidence available concerning the small business size of such a concern. However, such informal advice is not a small business size determination within the meaning of that term in the Small Business Size Standards Regulation and is not binding with respect to eligibility as a small business for the purpose of a particular Government procurement. Further, an opinion as to a concern's future small business size status, based on proposed but unexecuted changes in its organization, management, or contractual relations, is not a small business size determination.

(g) *Section 121.3-5 "Appeals."* The Size Appeals Board only has jurisdiction to consider appeals from formal determinations as to a concern's small business size status and appeals from product or service classification determination made by contracting officers for the purpose of Government procurements. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management, or contractual relations, or an appeal based on an allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended.

(h) *Sections 121.3-2(s) and 121.3-8(c) "Definition of nonmanufacturer."* For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegate and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

(i) *Section 121.3-8(g) "Refined petroleum products."* The proviso in § 121.3-8(g) (1) (iii) that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks, contemplates that, in accomplishing such refining, the bidder will utilize its own employees and facilities which it owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease.

The proviso in § 121.3-8(g) permitting a concern which meets the requirements in subdivisions (i) and (ii) of § 121.3-8(g) (1) to furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, which meets prescribed requirements, contemplates that the product exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only its own employees and its own facilities or facilities obtained through a bona fide lease.

(j) *Section 121.3-10 "Definition of Small Business for SBA Loans."* Following is an example of the method to be utilized in computing a diversified concern's size status for the purpose of an SBA loan: Concern A applies for an SBA loan. It is affiliated with Concern B. Concern A has 15 employees and \$2.5 million in receipts and is primarily engaged in the retail sale of groceries (Industry No. 5411) for which the size standard is \$5 million in annual receipts. Concern B has 100 employees and \$3 million in receipts and is primarily engaged in the manufacture of macaroni (Industry No. 2098) for which the size standard is 250 employees. The receipts of Concern A are only 60 percent of the size standard for its industry, since the combined percentages are less than 100 percent, Concern A can qualify for an SBA loan.

(k) *Section 121.3-8(e) (12).* The Small Business Size Appeals Board has interpreted this section to apply only to procurements requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to procurements for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is considered for size standards purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

(l) *Section 121.3-8(c) "Definition of Nonmanufacturer."* The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits, which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of applicants for SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for sections 801 and 802 loans, and 5B(C) assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
	Major Group 28—Apparel and Related Products (except men's dress shirts and nightwear) . . .	250
2821	Men's dress shirts and nightwear . . .	500
	Major Group 28—Chemicals and Allied Products . . .	
2879	Agricultural chemicals, n.e.c.	500
2873	Agricultural pesticides and other agricultural chemicals, n.e.c.	500
2812	Alkalies and chlorides	1,000
2831	Biological products	250
2805	Carbon, black	500
2823	Cellulose manmade fibers	1,000
2899	Chemicals and chemical preparations, n.e.c. (except fatty acids)	250
28161	Cyclic (coal tar) crudes	250
2815	Cyclic inorganic chemicals, organic pigments (lakes and toners) except cyclic (coal tar) crudes	750
2892	Explosives	750
28922	Fatty acids	500
2871	Fertilizers	500
2872	Fertilizers, mixing only	500
2891	Gum and wood chemicals	250
2861	Glue and wood chemicals	500
2813	Industrial gases	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2818	Industrial organic chemicals, n.e.c.	1,000
2816	Inorganic pigments	1,000
2833	Medicinal preparations, chemical products	750
2831	Paints, varnishes, lacquers, enamels and other protective coatings	250
2844	Perfumes, cosmetics, and other toilet preparations	500
2834	Pharmaceutical preparations	750
2821	Plastic materials, synthetic resins, and nonvulcanizable elastomers	750
2898	Printing ink	750
2841	Soap and other detergents, except specialty cleaners	250
2842	Specialty cleaning, polishing, and sanitation preparations, except soap and detergents	500
2843	Surface active agents, finishing agents, sulfonated oils and assistants	250
2824	Synthetic organic fibers, except cellulose	1,000
2822	Synthetic rubber (vulcanizable elastomers)	1,000
	Major Group 36—Electrical Machinery, Equipment, and Supplies	
3624	Carbon and graphite products	750
3672	Cathode ray picture tubes	500
3643	Current-carrying wiring devices	500
3634	Electric housewares and fans	750
3641	Electric lamps	1,000
3611	Electric measuring instruments and test equipment	500
3694	Electrical equipment for internal combustion engines	750
3629	Electrical industrial apparatus, n.e.c.	500
3699	Electrical machinery, equipment and supplies, n.e.c.	500
3679	Electronic components and accessories, n.e.c.	500
3639	Household appliances, n.e.c.	500
3631	Household cooking equipment	750
3633	Household laundry equipment	1,000
3632	Household refrigerators and home and farm freezers	1,000
3635	Household vacuum cleaners	750
3622	Industrial controls	750
3642	Lighting fixtures	250
3621	Motors and generators	1,000
3644	Noncurrent carrying wiring devices	500
3652	Phonographs	750
3612	Power, distribution and specialty transformers	750
3692	Primary batteries, dry and wet	1,000
3641	Radio and television receiving sets, except communication types	750

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)
3671	Radio and television receiving type electron tubes, except cathode ray.....	1,000
3682	Radio and television transmitting, signaling, and detection equipment, and apparatus.....	750
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes.....	500
3674	Semiconductors and related devices.....	750
3636	Sewing machines.....	750
3621	Storage batteries.....	500
3612	Switchgear and switchboard apparatus.....	750
3661	Telephones and telegraph apparatus.....	1,000
3673	Transmitting, industrial and special purpose electron tubes.....	750
3623	Welding apparatus.....	250
Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:		
3446	Architectural and ornamental metal work.....	250
3452	Bolts, nuts, screws, rivets and washers.....	500
3479	Coating, engraving, and allied services, n.e.c.....	250
3490	Collapsible tubes.....	250
3421	Cutlery.....	500
3471	Electroplating, plating, polishing, anodizing and coloring.....	200
3431	Enamelled iron and metal sanitary ware.....	750
3499	Fabricated metal products, n.e.c.....	250
3498	Fabricated pipe and fabricated pipe fittings.....	250
3408	Fabricated platework (boiler shop).....	250
3443	Fabricated structural steel.....	250
3422	Hand and edge tools, except machine tools and hand saws.....	250
3426	Hand saws and saw blades.....	250
3425	Hardware, n.e.c.....	250
3453	Heating equipment, except electric.....	500
3411	Metal cans.....	1,000
3442	Metal doors, sash, frames, molding, and trim.....	500
3467	Metal foil and leaf.....	250
3491	Metal shipping barrels, drums, kegs, and pallets.....	800
3461	Metal stampings.....	250
3451	Miscellaneous fabricated wire products.....	250
3449	Miscellaneous metal work.....	250
3482	Plumbing fixture fittings and trim (brass goods).....	250
3402	Safe and vaults.....	500
3461	Screw machine products.....	250
3444	Sheet metal work.....	250
3493	Sheet springs.....	500
3494	Valves and pipe fittings, except plumbers' brass goods.....	500
Major Group 20—Food and Kindred Products:		
2094	Animal and marine fats and oils.....	250
2063	Best sugar.....	750
2082	Biscuit, cracker, and pretzels.....	750
2046	Blendet and prepared flour.....	500
2086	Bottled and canned soft drinks and carbonated waters.....	250
2061	Bread and other bakery products, except biscuit, cracker, and pretzels.....	250
2071	Candy and other confectionery products.....	250
2061	Cane sugar, except refining only.....	250
2062	Cane sugar refining.....	750
2081	Canned and cured seafoods.....	500
2083	Canned fruits, vegetables, preserves, jams and jellies.....	800
2082	Canned specialties.....	1,000
2048	Cereal preparations.....	1,000
2022	Cheese, natural and processed.....	250
2073	Chewing gum.....	500
2072	Chocolate and cocoa products.....	500
2023	Condensed and evaporated milk.....	800
2021	Cottonseed oil mills.....	250
2021	Creamery butter.....	250
2088	Distilled, rectified, and blended liquors.....	750
2084	Dried and dehydrated fruits and vegetables.....	800

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
2087	Flavoring extracts and flavoring syrups, n.e.c.....	800
2041	Flour and other grain mill products.....	500
2026	Fluid milk.....	250
2099	Food preparations, n.e.c.....	500
2091	Desserts (ready-to-put).....	500
2094	Baking powder and yeast.....	500
2036	Fresh or frozen packaged fish.....	250
2037	Frozen fruits, fruit juices, vegetables and specialties.....	800
2024	Ice cream and frozen desserts.....	600
2098	Macaroni, spaghetti, vermicelli, and noodles.....	250
2083	Malt.....	250
2082	Malt liquors.....	500
2067	Manufactured ice.....	250
2011	Meatpacking plants.....	500
2035	Pickled fruits and vegetable products.....	250
2015	Poultry and small game dressing and packing, wholesale.....	250
2042	Prepared feeds for animals and fowls.....	250
2044	Rice milling.....	250
2045	Softening, table oils, margarine, and other edible fats and oils, n.e.c.....	750
2013	Sausage and other prepared meat products.....	500
2096	Shortening, table oils, margarine, and other edible fats and oils, n.e.c.....	750
2092	Soybean oil mills.....	500
2093	Vegetable oil mills, except cottonseed and soybean.....	1,000
2046	Wet corn milling.....	750
2084	Wines, brandy, and brandy spirits.....	250
Major Group 25—Furniture and Fixtures:		
2599	Furniture and fixtures, n.e.c.....	250
2519	Household furniture, n.e.c.....	250
2515	Mattresses and bedspreads.....	250
2514	Metal household furniture.....	250
2522	Metal office furniture.....	500
2542	Metal partitions, shelving, lockers, and office and store fixtures.....	250
2531	Public building and related furniture.....	250
2591	Veneer, blinds and shades.....	250
2511	Wood household furniture, except upholstered.....	250
2512	Wood household furniture, upholstered.....	250
2521	Wood office furniture.....	250
2541	Wood partitions, shelving, lockers, and office and store fixtures.....	250
Major Group 31—Leather and Leather Products:		
3181	Boot and shoe cut stock and findings.....	250
3141	Footwear, except house slippers and rubber footwear.....	500
3142	House slippers.....	250
3121	Industrial leather belting and packing.....	250
3151	Leather dress, semidress, and work gloves.....	250
3199	Leather goods, n.e.c.....	250
3111	Leather tanning and finishing.....	250
3161	Luggage.....	250
3172	Personal leather goods, except handbags and purses.....	250
3171	Women's handbags and purses.....	250
Major Group 34—Lumber and Wood Products, Except Furniture:		
Major Group 35—Machinery, Except Electrical:		
3581	Automatic merchandising machines.....	750
3562	Ball and roller bearings.....	250
3564	Blowers, exhaust and ventilating fans.....	250
3574	Calculating and accounting machines, except electronic computing equipment.....	1,000
3582	Commercial laundry, dry-cleaning and pressing machines.....	250
3581	Construction machinery and equipment.....	750
3535	Cryovisors and conveyer equipment.....	250
3573	Electronic computing equipment.....	1,000
3534	Elevators and moving stairways.....	500
3522	Farm machinery and equipment.....	500
See footnotes at end of table.		

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
3561	Food products machinery.....	250
3569	General industrial machinery and equipment, n.e.c.....	250
3536	Hoists, industrial cranes and monorail systems.....	500
3565	Industrial patterns.....	250
3567	Industrial process furnaces and ovens.....	250
3537	Industrial trucks, tractor trailers, and stackers.....	750
3519	Internal combustion engines, n.e.c.....	1,000
3545	Machine tool accessories and measuring devices.....	250
3542	Metal forming machines.....	500
3542	Precision-measuring tools.....	250
3541	Machine tools, metal cutting types.....	500
3566	Measuring and dispensing pumps.....	500
3566	Mechanical power transmission equipment, except ball and roller bearings.....	500
3548	Metal working machinery, except machine tools.....	600
3532	Mining machinery and equipment, except oilfield machinery and equipment.....	600
3599	Miscellaneous machinery, except electrical.....	250
3579	Miscellaneous machinery, except electrical.....	250
3533	Oilfield machinery and equipment.....	600
3554	Paper industries machinery.....	250
3565	Printing trades machinery and equipment.....	600
3561	Pumps, air and gas compressors, and pump-out equipment.....	600
3561	Refrigerators; refrigeration machinery, except air conditioning units.....	750
3576	Scales and balances, except laboratory.....	250
3589	Service industry machines, n.e.c.....	250
3544	Special die and tools, die sets, jigs, and fixtures.....	250
3559	Special industry machinery, n.e.c.....	250
3511	Steam engines, steam, and gas, and hydraulic turbine generator sets.....	1,000
3582	Textile machinery.....	250
3572	Typewriters.....	1,000
3563	Woodworking machinery and equipment.....	250
Major Group 30—Miscellaneous Manufacturing Industries:		
3991	Brooms and brushes.....	250
3963	Buttons.....	250
3985	Carbon paper and inked ribbons.....	250
3943	Children's vehicles, except bicycles.....	250
3961	Costume jewelry and costume novelties, except precious metal.....	250
3942	Dolls.....	250
3962	Fashions, plumes and artificial flowers.....	250
3941	Games and toys, except dolls and children's vehicles.....	250
3912	Jewelers' findings and materials.....	250
3911	Jewelry, precious metal, and Laplary work and cutting and polishing diamonds.....	250
3952	Lead pencils, crayons, and artists' materials.....	250
3996	Linoleum, asphalted-felt base, and other hard surface floor coverings, n.e.c.....	750
3999	Manufacturing industries, n.e.c.....	250
3953	Marking devices.....	600
3993	Matches.....	250
3994	Musicians' instruments.....	600
3981	Musical instruments and parts.....	600
3964	Needles, pins, hooks and eyes, and similar notions.....	250
3951	Pens, pen points, fountain pens, ball point pens, mechanical pencils and parts.....	600
3993	Signs and advertising displays.....	250
3914	Silverware and plated ware.....	600
3949	Sporting and athletic goods, n.e.c.....	250
Major Group 10—Ordnance and Accessories:		
1929	Ammunition, except for small arms, n.e.c.....	1,000
1955	Guided missiles and space vehicles, completely assembled.....	250
1911	Guns, howitzers, mortars, and related equipment.....	250
1999	Ordnance and accessories, n.e.c.....	250

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
1941	Sighting and fire-control equipment.....	250
1951	Small arms.....	1,000
1961	Small arms ammunition.....	1,000
1931	Tanks and tank components.....	1,000
	Major Group 29—Paper and Allied Products:	
2643	Bags, except textile bags.....	500
2661	Building paper and building board mills.....	750
2649	Converted paper and paper-board products, n.e.c.....	500
2633	Corrugated and solid-fiber boxes.....	250
2645	Die cut paper and paperboard, and cardboard.....	250
2642	Envelopes.....	250
2658	Fiber cans, tubes, drums, and similar products.....	250
2651	Folding paperboard boxes.....	250
2641	Paper coating and glazing.....	500
2621	Paper mills, except building-paper mills.....	750
2631	Paperboard mills.....	750
2646	Pressed and molded pulp goods.....	750
2611	Pulp mills.....	2,500
2654	Sanitary food containers.....	750
2647	Sanitary paper products.....	500
2652	Setup paperboard boxes.....	250
2644	Wallpaper.....	250
	Major Group 28—Petroleum Refining and Related Industries:	
2632	Asphalt felts and coatings.....	750
2622	Lubricating oils and greases.....	500
2651	Paving mixtures and blocks.....	250
2611	Petroleum refining.....	1,000
2659	Products of petroleum and coal, n.e.c.....	250
	Major Group 33—Primary Metal Industries:	
3361	Aluminum castings.....	250
3312	Blast furnaces (including coke ovens) steel works, and rolling mills.....	1,000
3362	Brass, bronze, copper, copper base alloy castings.....	250
3316	Flat rolled sheet, strip and bars.....	1,000
3337	Drawing and insulating of non-ferrous wire.....	1,000
3313	Electrometallurgical products.....	750
3321	Gray iron foundries.....	500
3331	Iron and steel forgings.....	500
3322	Malleable iron foundries.....	500
3369	Nonferrous castings, n.e.c.....	250
3332	Nonferrous forgings.....	250
3330	Primary metal industries, n.e.c., primary production of aluminum.....	1,000
3331	Primary smelting and refining of copper.....	1,000
3332	Primary smelting and refining of lead.....	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.....	750
3333	Primary smelting and refining of zinc.....	750
3352	Rolling, drawing, and extruding of aluminum.....	750
3351	Rolling, drawing, and extruding of copper.....	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum.....	750
3341	Sewerly smelting, refining and alloying of nonferrous metals and alloys.....	250
3323	Steel foundries.....	500
3317	Steel pipe and tubes.....	1,000
3315	Steel wire drawing and steel nails and spikes.....	1,000
	Major Group 27—Printing and Publishing Industries:	
	Major Group 38—Professional, scientific and Controlling Instruments: Photographic and Optical Goods: Watches and Clocks:	
3822	Automatic temperature controls.....	500
3843	Dental equipment and supplies.....	250
3811	Engineering, laboratory, and scientific and research instruments and associated equipment.....	500
3821	Mechanical measuring and controlling instruments, except automatic temperature controls.....	500
3861	Ophthalmic goods.....	250
3831	Optical instruments and lenses.....	250

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
3842	Orthopedic, prosthetic, and surgical appliances and supplies.....	250
3861	Photographic equipment and supplies.....	500
3841	Surgical and medical instruments and apparatus.....	250
3872	Watches, clocks, and parts except watchcases.....	250
3871	Major Group 36—Rubber and Miscellaneous Plastics Products:	
3066	Fabricated rubber products, n.e.c.....	500
3079	Miscellaneous plastics products.....	250
3031	Reclaimed rubber.....	750
3021	Rubber footwear.....	1,000
3011	Tires and liner tubes.....	1,000
	Major Group 32—Stone, Clay, and Glass Products:	
3291	Abrasive products.....	250
3293	Asbestos products.....	750
3251	Brick and structural clay tile.....	250
3241	Cement, hydraulic.....	750
3253	Ceramic wall and floor tile.....	500
3255	Clay refractories.....	250
3271	Concrete block and brick.....	250
3272	Concrete products, except block and brick.....	250
3281	Cut stone and stone products.....	250
3263	Fine earthenware (whiteware), table and kitchen articles.....	750
3211	Fire glasses.....	1,000
3221	Glass containers.....	750
3231	Glass products, made of purchased glass.....	1,000
3275	Gypsum products.....	250
3296	Mineral wool.....	750
3295	Minerals and earths, ground or unground.....	250
3297	Nonmetallic mineral products, n.e.c.....	250
3299	Nonmetallic mineral products, n.e.c.....	500
3264	Porcelain electrical supplies.....	500
3269	Pottery products, n.e.c.....	250
3229	Pressed and blown glass and glassware, n.e.c.....	750
3273	Ready-mixed concrete.....	500
3293	Steam and other packing and pipe and boiler covering.....	250
3261	Structural clay products, n.e.c.....	500
3260	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories.....	750
3262	Vitreous china table and kitchen articles.....	500
	Major Group 22—Textile Mill Products:	
2205	Artificial leather, oilcloth, and other impregnated and coated fabrics, except rubberized.....	1,000
2211	Broad-woven fabric mills, cotton.....	1,000
2221	Broad-woven fabric mills, man-made fiber and silk.....	500
2220	Broad-woven fabric mills, wool, including dyeing and finishing.....	500
2271	Carpets, rugs, and mats, n.e.c.....	250
2258	Cordage and twine.....	250
2269	Dyeing and finishing textiles, n.e.c.....	250
2291	Felt goods, except woven felts and finishes of broad-woven fabric of cotton.....	500
2262	Finishers of broad-woven fabrics of manmade fiber and silk.....	500
2256	Knit outerwear mills.....	250
2254	Knit underwear mills.....	250
2259	Knitting mills, n.e.c.....	250
2292	Lace goods.....	250
2241	Narrow fabrics and other small-waves mills: cotton, wool, silk, and manmade fiber.....	250
2293	Paddings and upholstery filling.....	250
2294	Processed waste and recovered fibers and flock.....	250
2282	Seamless hosiery mills.....	250
2269	Textile goods, n.e.c.....	250
2284	Thread mills.....	500
2286	Tire cord and fabric.....	1,000
2272	Tufted carpets and rugs.....	500

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
2297	Wool scouring, worsted combing, and tow to top mills.....	250
2271	Woven carpets and rugs.....	750
2283	Yarn mills, wool, including carpet and rug yarn.....	250
2281	Yarn spinning mills, cotton, manmade fibers and silk.....	500
2282	Yarn throwing, twisting, and winding mills, cotton, manmade fibers and silk.....	250
	Major Group 21—Tobacco Manufacturing:	
2111	Cigarettes.....	1,000
2121	Cigars.....	500
2131	Tobacco (chewing and smoking) and snuff.....	500
2141	Tobacco stemming and redrying.....	500
	Major Group 37—Transportation Equipment:	
3721	Aircraft.....	1,500
3722	Aircraft engines and engine parts.....	1,000
3729	Aircraft parts and auxiliary equipment, n.e.c.....	1,000
3723	Aircraft propellers and propeller parts.....	250
3732	Boat building and repairing.....	1,000
3733	Boat building and repairing.....	1,000
3741	Locomotives and parts.....	1,000
3717	Motor vehicles and parts.....	1,000
3751	Motorcycles, bicycles, and parts.....	500
3742	Railroad and street cars.....	750
3731	Shipbuilding and repairing.....	1,000
3791	Trailer coaches.....	250
3799	Transportation equipment, n.e.c.....	250
3713	Truck and bus bodies.....	250
3715	Truck trailers.....	500

1 The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

2 Guided missiles and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

3 Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrel-per-day crude oil or bona fide feed stock capacity from owned and/or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

4 Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

5 The three standard Industrial Classification Industries (2711, 2712 and 2714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)

Census classification code	Industry or class of products	Employment size standard (number of employees) 1
	Major Group 19—Ordnance and Accessories:	
1925	Guided missiles and space vehicles, completely assembled.....	1,000
1929	Ammunition, except rockets.....	1,000
1931	Arms, n.e.c.....	1,500
1951	Tanks and tank components.....	1,000
1961	Small arms.....	1,000
1961	Small arms ammunition.....	1,000
	Major Group 20—Food and Kindred Products:	
2026	Fluid Milk.....	750

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) ¹
2032	Canned specialties.....	1,000
2043	Cereal preparation.....	1,000
2046	Wet corn milling.....	750
2053	Biscuits, crackers, and pretzels.....	750
2052	Cane sugar refining.....	750
2053	Beet sugar.....	750
2085	Distilled, rectified, and blended liquors.....	750
2093	Vegetable oil mills, except cottonseed and soybean.....	1,000
2096	Shortening, table oils, margarine and other edible fats and oils, n.e.c. Major Group 21—Tobacco Manufactures:	750
2111	Cigarettes.....	1,000
2111	Major Group 22—Textile Mill Products:	
2211	Broad-woven fabric mills, cotton.....	1,000
2261	Fishers of broad-woven fabrics of cotton.....	1,000
2271	Woven carpets and rugs.....	750
2295	Artificial leather, olefin, and other impregnated and coated fabrics, except rubberized.....	1,000
2296	Tire cord and fabric.....	1,000
2296	Major Group 26—Paper and Allied Products:	
2661	Building paper and building board mills.....	750
2621	Papermills, except building papermills.....	750
2631	Paperboard mills.....	750
2646	Pressed and molded pulp goods.....	750
2611	Pulp mills.....	750
2654	Sanitary food containers.....	750
2612	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and Chlorine.....	1,000
2823	Cellulose manmade fibers.....	1,000
2815	Dyes, dyo (cyclic) intermediates and organic pigments (lakes and toners).....	750
2872	Explosives.....	1,000
2813	Industrial gases.....	1,000
2819	Industrial inorganic chemicals, n.e.c.....	1,000
2818	Industrial organic chemicals, n.e.c.....	1,000
2816	Inorganic pigments.....	750
2813	Medicinal chemicals and botanical products.....	750
2834	Pharmaceutical preparations.....	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers.....	750
2841	Soap and other detergents, except specialty cleaners.....	750
2824	Synthetic organic fibers, except cellulose.....	1,000
2822	Synthetic rubber (vulcanizable elastomers).....	1,000
2052	Major Group 29—Petroleum Refining and Related Industries: ²	
2952	Asphalt felts and coatings.....	750
2952	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3011	Tires and inner-tubes.....	1,000
3011	Passenger car and motorcycle pneumatic tires (astings) ³	
3012	Truck and bus (and off-the-road) pneumatic tires.....	750
3031	Reclaimed rubber.....	1,000
3021	Rubber footwear.....	1,000
3021	Major Group 32—Stone, Clay, and Glass Products:	
3211	Flat glass.....	1,000
3221	Glass containers.....	750
3229	Pressed and blown glass and glassware, n.e.c.....	750
3241	Cement, hydraulic.....	750
3241	Vitrious china plumbing fixtures and china and earthenware fittings and bathroom accessories.....	750
3275	Gypsum products.....	1,000
3252	Asbestos products.....	750
3296	Mineral wool.....	750
3297	Nonclay refractories.....	750
3312	Major Group 33—Primary Metal Industries:	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills.....	1,000
3313	Electrometallurgical products.....	750
3315	Steel wire drawing and steel nails and spikes.....	1,000

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) ¹
3316	Cold rolled sheet, strip and bars.....	1,000
3317	Steel pipe.....	1,000
3331	Primary smelting and refining of copper.....	1,000
3332	Primary smelting and refining of lead.....	1,000
3333	Primary smelting and refining of zinc.....	750
3334	Primary production of aluminum.....	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.....	750
3351	Rolling, drawing, and extruding of copper.....	750
3352	Rolling, drawing, and extruding of aluminum.....	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum.....	750
3357	Drawing and laminating of nonferrous wire.....	1,000
3399	Primary metal industries, n.e.c. Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3411	Metal cans.....	1,000
3451	Enamelled iron and metal sanitary ware.....	750
3451	Major Group 35—Machinery, Except Electrical:	
3511	Steam engine, steam, gas, and hydraulic turbines; and steam, gas, and hydraulic generators set units.....	1,000
3519	Internal combustion engines, n.e.c.....	1,000
3531	Construction machinery and equipment.....	750
3537	Industrial Trucks, Tractors, Trailers and Stackers.....	750
3562	Ball and roller bearings.....	1,000
3574	Calculating and accounting machines, except electronic computing equipment.....	1,000
3573	Electronic computing equipment.....	1,000
3573	Typewriters.....	1,000
3585	Refrigerators; refrigeration machinery, except household; and complete air-conditioning units.....	750
3585	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3612	Power, distribution, and specialty transformers.....	750
3613	Switchgear and switchboard apparatus.....	750
3621	Motors and generators.....	1,000
3622	Industrial controls.....	750
3624	Carbon and graphite products.....	750
3631	Household cooking equipment.....	750
3632	Household refrigerators and home and farm freezers.....	1,000
3633	Household laundry equipment.....	1,000
3634	Electric houseware and fans.....	750
3635	Household vacuum cleaners.....	750
3636	Sewing machines.....	1,000
3641	Electric lamps.....	1,000
3651	Radio and television receiving sets, except communication types.....	750
3652	Phonograph records.....	750
3651	Telephone and telegraph apparatus.....	1,000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus ⁴	750
3672	Cathode ray picture tubes.....	750
3694	Electrical equipment for internal combustion engines.....	1,000
3692	Primary batteries, dry and wet.....	1,000
3671	Radio and television receiving type electron tubes, except cathode ray.....	1,000
3673	Transmitting, industrial, and special purpose electron tubes.....	750
3721	Major Group 37—Transportation Equipment:	
3721	Aircraft.....	1,000
3722	Aircraft engines and engine parts ⁵	1,000
3723	Aircraft propellers and propeller parts.....	1,000
3729	Aircraft parts and auxiliary equipment, n.e.c. ⁶	1,000

See footnotes at end of table.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) ¹
3741	Locomotives and parts.....	1,000
3717	Motor vehicles and parts.....	1,000
3771	Passenger cars (knocked down or assembled).....	750
3742	Railroad and street cars.....	1,000
3731	Shipbuilding and repairing.....	1,000
3896	Major Group 38—Miscellaneous Manufacturing Industries:	
3896	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.....	750

¹The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

²The size standard for SIC 2911 is set forth in 121.3-8(g).

³The size standards for SIC 3011, 3012, and 3711 are set forth in section 121.3-8(b)(4) and section 121.3-8(b)(5), respectively of this part.

⁴Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3692.

⁵Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

⁶The three standard Industrial Classification Industries (3711, 3712, and 3713) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALE

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA Business loans, displaced business loans, economic opportunity loans, and alternate standards for sections 801 and 802 loans and 811C assistance.) (Where code is followed by letter, size standard applies only to class of product designated.)

Industry or sub-industry code	Industry, subindustry or class of products	Annual sales size standard (maximum in millions)
5000A	Amusement, sporting goods.....	10
5001A	Coal.....	10
5005B	Construction materials (excluding stone, lumber and millwork).....	10
5002	Construction and mining machinery and equipment.....	10
5043	Dairy products.....	10
5022	Drugs, drug proprietaries, drug-gists sundries.....	10
5004	Electrical appliances, televisions and radio sets.....	10
5039	Footwear.....	10
5053	Grain.....	10
5049	Groceries and related products not elsewhere classified.....	10
5007B	Home furnishings, floor coverings.....	10
5084	Industrial machinery and equipment.....	10
5085	Industrial supplies.....	10
5054	Livestock (except horses and mules).....	10
5047	Meats and meat products.....	10
5001B	Motor service concerns.....	10
5034	Notions and other dry goods.....	10
5033	Piece goods (woven fabrics).....	10
5096A	Printing and writing paper.....	10
5094	Tobacco and its products.....	10
5013	Automobiles and other motor vehicles.....	15

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALE—Continued

Industry or sub-industry code	Industry, subindustry or class of products	Annual sales size standard (maximum) (in millions)
5020	Chemicals and allied products, not elsewhere classified.....	\$15
5081	Commercial machines and equipment.....	15
5082	Cotton.....	15
5083	Electrical apparatus and equipment, wiring supplies and construction materials.....	15
5083	Farm machinery and equipment.....	15
5042	Frozen foods.....	15
5041	Groceries, general.....	15
5090	Industrial and personal service paper only.....	15
5091c	Metal sales offices.....	15
5028	Paints and varnishes.....	15
5092	Petroleum and petroleum products.....	15
5014	Tires and tubes.....	15
5095b	Wines and distilled alcoholic spirits.....	15

SCHEDULE D—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunities loans, and as alternate standards for sections 505 and 502 loans SBIC assistance.) Where code is followed by letter size standard applies only to class of product designated.

Industry or sub-industry code	Industry, subindustry or class of products	Annual sales size standard (maximum) (in millions)
	Major Group 53—Apparel and Accessory Stores:	
5661	Family clothing stores.....	\$1.5
5611	Men's and boys' clothing and furnishings.....	1.5
5661	Shoe stores.....	1.5
5621	Women's ready-to-wear stores.....	1.5
	Major Group 55—Automotive Dealers and Gasoline Service Stations:	
5599a	Aircraft (a part of aircraft and automotive dealers, not elsewhere classified).....	3.0
5511	Motor vehicle dealers (new and used cars).....	5.0
5521	Motor vehicle dealers (used cars only).....	5.0
	Major Group 54—Food Stores:	
5411	Grocery stores.....	5.0
5421a	Meat markets (a part of meat and fish (seafood) markets).....	5.0
	Major Group 57—Furniture, Home Furnishings and Equipment Stores:	
5722	Household appliance stores.....	1.5
5732	Radio and television stores.....	1.5
	Major Group 53—General Merchandise:	
5311	Department stores.....	5.0
5321	Mall order houses.....	5.0
5331	Variety stores.....	2.0
	Major Group 52—Material, Hardware and Farm Equipment Dealers:	
5262	Farm equipment dealers.....	3.0

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut:	Percentage of timber purchased that may be sold to other than small business
Alaska.....	50 percent

SCHEDULE F—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MINING AND MINING SERVICES

(The following size standards are to be used when determining the size status of mining and mining services concerns for the purpose of SBA business loans (or loan guarantees), displaced business loans, economic opportunity loans, and as alternate standards for sections 501 and 502 loans and Small Business Investment Company assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)
1111	Anthracite.....	250
1112	Anthracite Mining Services.....	250
1211	Bituminous Coal.....	250
1213	Bituminous Coal and Lignite Mining Services.....	500

SCHEDULE G—PETROLEUM ADMINISTRATION FOR DEFENSE (PAD) DISTRICTS AS UTILIZED BY THE DEFENSE FUEL SUPPLY CENTER IN THE PROCUREMENT OF REFINED PETROLEUM PRODUCTS

PAD District and States Included in PAD District:
 1. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.
 2. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee.
 3. New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama.
 4. Montana, Idaho, Wyoming, Utah, and Colorado.
 5. Alaska, Hawaii, Washington, Oregon, Nevada, California, and Arizona.

[FR Doc.72-184 Filed 1-7-72;8:45 am]

PART 121
SBA RULES AND REGULATIONS

Filing Instructions: File this Amendment 1 immediately following Revision 11 of Part 121.

This Amendment broadens the definition of "concern" to require an entity to not only be organized for profit with a place of business in the United States, but to make a significant contribution to the U. S. economy through the payment of taxes, use of American products, labor, etc., as well.

[Rev. 11, Amdt. 1]

**PART 121—SMALL BUSINESS SIZE
STANDARDS**

**Definition of Small "Concern" for the
Purpose of Government Procurement**

On October 28, 1971, there was published in the FEDERAL REGISTER (36 F.R. 20705) a notice that the Administrator of the Small Business Administration proposed to revise the definition of "concern" in § 121.3-2(l) of Part 121, Chapter 1, Title 13 of the Code of Federal Regulations to require that a "concern," for the purpose of Part 121, have in the United States, a place of business which makes a significant contribution to the U.S. economy.

The only comment received concerning the proposal suggested that the wording be clarified. This has been accomplished in the amendment set forth below.

Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations is hereby amended by revising the definition of concern in § 121.3-2(l) to read as follows:

**§ 121.3-2 Definition of terms used in
this part.**

* * * * *

(l) "Concern" means any business entity organized for profit with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

Published Date: January 26, 1972
Effective Date: February 24, 1972
Cite: 37 F. R. 1160

Senator ROTH. You are saying there is always an open hearing at which both sides have a right to see the evidence upon which the board bases its decisions?

Mr. KNEBEL. Yes, sir.

Mr. ROTH. In all cases?

Mr. KNEBEL. And during the hearing you can present new evidence, later adduced evidence or what-have-you.

Mr. KLEPPE. I think I could add to that, it is not very normal but we have addressed ourselves to the possibilities that exist.

Senator ROTH. These hearings are not covered by the Administrative Practices Act, are they?

Mr. KNEBEL. No, sir.

Senator ROTH. Shouldn't they be? As I understand it, this is a most important decision and it involves the right of a particular business to receive assistance from your agency.

Mr. KNEBEL. To be frank and answer your question as to whether they should or shouldn't be, the reason we go ahead and try to hold these hearings very expeditiously is so the aggrieved applicant can get his hearing before the contract is let. It does the individual no good if we have a full field hearing after 60 days of notice in the public register if the contract was let before the hearing is held. We have to have that hearing and get it out and we have to help the contracting officer so he can make a determination and award the contract.

Senator ROTH. You are talking about the time of the hearing. Perhaps you can't wait 60 days.

Mr. KNEBEL. There are very strict notice procedures. The Administrative Procedures Act has some very stringent notice procedures which would apply if you adopted it completely.

Senator ROTH. You could make exceptions to these time requirements. But how about the actual handling of the hearing itself?

Mr. KNEBEL. I think you will find, sir, within our regulation they are very, very close. In fact the time limitation is the only deviation from the APA if you get right down to it.

Senator ROTH. How many hearings did you hold last year?

Mr. KNEBEL. I don't have that, sir, but I would be glad to supply that for the record.

Mr. KLEPPE. Quite a few of them.

Senator ROTH. Do you have an idea; 5, 50, 100?

Mr. KLEPPE. Size appeal hearings last year? More than that. Are you talking about public hearings?

Senator ROTH. Yes.

Mr. KLEPPE. I don't think we held any public hearings.

Mr. KNEBEL. I really can't answer that question.

Mr. KLEPPE. Can we supply that for you?

Senator ROTH. Mr. Chairman, I would like to ask that sometime in the future examine the appeals procedure in greater depth. I think it is important that we insure that all parties are fairly dealt with and have an opportunity to present their case. I am going to suggest that at a later time, after you have had an opportunity to review your proceedings, that we ask you to come back to discuss this further.

Mr. KNEBEL. Very well, sir.

Senator ROTH. Thank you.

Senator CRANSTON. Turning to the OMBE question for just one moment and the 406 program.

Until OMBE proves that it is rendering the kind of technical assistance now given to minority firms by SBA, how will that technical assistance be rendered during this experimental gap period?

Mr. KLEPPE. Mr. Chairman, we are bridging the gap and as a result of it we are furnishing as much information on a cooperative basis as we can based on our experience to OMBE and we believe that the gap will be bridged successfully.

Senator CRANSTON. Are you convinced there will be no cutback in the technical assistance made available to minority enterprises during the "bridging the gap" period?

Mr. KLEPPE. As a matter of fact, it should be substantially expanded, absolutely.

Senator CRANSTON. Will there be a gap between the time you cease technical assistance and when OMBE begins its service?

Mr. KLEPPE. We should have the gap breached and there should be substantial expansion in it. That is the intent of the President's request of the legislation passed and I believe it will function that way. We are not going to be jealous and tight-mouthed about our experience. We are going to pass it on because it has been a good experience and we believe that it has value for another agency of government to use.

Senator CRANSTON. Isn't it a fact that the technical assistance to minority business will cost more under OMBE than it has been under the SBA because of the change from grant to call contracts?

Mr. KLEPPE. I think I better say no comment on that, Mr. Chairman.

Senator CRANSTON. Would you explore that question and submit an answer in writing?

Mr. KLEPPE. I would be glad to explore it but I may have to back off on commenting on it because I think that would be preguessing something about another agency of government that I am not totally qualified to comment on.

Senator CRANSTON. I understand your problem on that.

What is your opinion on setting a standard for SBA to make it available for high-technology aerospace companies to move into new fields?

Mr. KLEPPE. Mr. Chairman, we have tried to address ourselves to this question because we have three or four specific pockets in this country that are involved with this question within the framework of our legislative authority. It does not vary a great deal from what our ongoing programs are and our ongoing requirements. I think that if anything of a substantial nature comparable, as an example, to the EOL loan program that we have, would come into being it would have to be legislative. We recognize the problems in these areas and I think maybe the most specific area that has come to our attention is the fact that a number of these highly qualified, very intelligent, bright men have seen fit—having lost their jobs—to organize a new business, a new company. All I can say to you and to the public is that we invite these gentlemen or women to come and talk to us and see if there isn't something that we can help them with in both funding and management assistance and whatever ideas we can grant within the framework of our present legislative authority.

This is the message that we have given to our people also.

Senator CRANSTON. That could be a very helpful program. I have just one other matter I want to ask you about. It is my understanding that the small business share of contracts awarded by Federal departments and agencies has declined in recent years and in 1971 it was the lowest yet, down to 17 percent. Small business' share of contracts awarded by major defense contractors has also been falling sharply. This has had a serious impact on employment in quite a few areas of the country.

It is your agency's responsibility I understand to maximize small business' share of Government contract work.

What are you doing to increase small business participation in Government contracts?

Mr. KLEPPE. Everything that we can. We are in almost daily contact with the procuring agencies of Government. We have seminars, conferences to bring to light the responsibilities that we have and that is legislatively designed so that we get a bigger share of Government procurement of small business. We have done everything we can and we are going to continue to do it. Even though the percentage that you refer to has declined there are two comments that I want to make there. The total dollars is still up. However, we must consider that total Government procurement has declined quite substantially and specifically in the defense area.

So all of these factors are involved in the small business share. But we believe we recognize very thoroughly our responsibilities here and we are just going to continue to communicate the best we can. Sometimes it has to be pretty strong communication with the procuring agencies of our Government to get small business a fair share of the Government procurement.

Senator CRANSTON. If there is a decline in the total dollar amount and in the total percentage going to small business, how can there be an increase in the dollar amount going to small business?

Mr. KLEPPE. I knew you were going to catch that but it is exactly right. I have to qualify it on defense versus other procurement.

Senator CRANSTON. I see. If you are doing all you can and it is still going down, why?

Mr. KLEPPE. I hate to always complain and I don't always complain about the fact that we have a serious limitation of manpower in our PCR area. We have 42 in the whole United States, Mr. Chairman. I can tell you that in the areas where we have a PCR, procurement center representative, to qualify the language, in areas where we have a PCR, our percentage is 22 percent as against the average of 17.

I believe that gives a dollar substantiation for the necessity for manpower in this area. But that is all we have.

Senator CRANSTON. Does it reflect also in addition to that, the obviously valid point, an willingness on the part of the Government agencies that are engaged in contracting to recognize the policy that is supposed to require that they give a substantial portion to small business when they can?

Mr. KLEPPE. Mr. Chairman, it is getting much better. As a matter of fact, there is a recent letter from the Assistant Secretary of Defense for Procurement to the agencies of the Defense Department about the responsibility that they have in cooperating with us in the set-aside program. So we are seeing some real light at the end of the tunnel in this area and I just have to be hopeful about the fact that

we are going to be able to do a little better in this for the small business community because it is a very vital part of the change that we have under our legislative authority.

Senator CRANSTON. Do you have any recommendations for any stronger mandates to Government agencies in this area?

Mr. KLEPPE. I guess not at this time. It seems to me that we are facing a human problem here no matter what mandates come forth, that is these gentlemen who work in these procuring agencies have a responsibility also of making the best procurement for the Federal Government and their department that they can. That doesn't always include small business. So we have this to battle all the time. It is a human problem and we are going to try to work with it to make it a little better for the small business.

Senator CRANSTON. Thank you very much.

Senator ROTH, do you have anything else?

Senator ROTH. Just one question. Last year we discussed your request for consultants. Are you currently using outside consulting advice?

Mr. KLEPPE. Consultants? We don't have any.

Senator ROTH. No consultants at all?

Mr. KLEPPE. No, no consultants.

Senator ROTH. I wish you would spread this practice to other agencies.

Mr. KLEPPE. There isn't any provision in our forthcoming budget for consultants either.

Senator ROTH. One other question. How do you divide your lending authority between areas and regions?

Mr. KLEPPE. What authority do you mean?

Senator ROTH. Your loan and guarantee authority based on demands, needs, what it is to take care of the operations that are out there. In direct funds, I want to specifically say, we allocated this fiscal year strictly on the basis of population by State and we will allow no transfer interstate. We will allow transfers intrastate but not interstate.

Now whether that is right or wrong—I know it can be argued—we had a new census in 1970 which put us in a pretty up-to-date position and I want to see this agency get back into direct lending business because of the needs, so this is the vehicle that we used.

Senator ROTH. Strictly on population.

Mr. KLEPPE. Strictly on population.

Senator ROTH. Do you have any studies showing a breakdown of loans and guarantees by regions and States?

Mr. KLEPPE. Certainly.

Senator ROTH. I would like to see those.

Mr. KLEPPE. We don't want to go out of business by not having guarantee authorities. So we will transfer to another area if they have more activity.

Senator ROTH. As a matter of fact, Mr. Chairman, I would request that that be supplied for purposes of the record.

Mr. KLEPPE. All right.

Senator ROTH. Thank you, Mr. Chairman. Thank you, Mr. Kleppe. (The information requested follows:)

SBA does not allocate its guarantee levels by States. These levels are allocated by regions. They may be transferred from one region to another as demand dictates. Similarly, a regional office may transfer or reallocate from one district to another as demand dictates. The section 7(a) and EOL-guaranteed loan allocation by region for fiscal year 1972 is as follows:

§ 7(a) AND EOL GUARANTEED LOAN ALLOCATION BY REGION

(Dollars in millions)

<i>Region</i>	<i>Fiscal year 1972 allocation</i>
1 -----	\$66.5
2 -----	53.0
3 -----	71.1
4 -----	120.2
5 -----	184.0
6 -----	137.6
7 -----	146.5
8 -----	76.2
9 -----	121.0
10 -----	64.7
Total -----	1,040.8

Senator CRANSTON. If SBA funds are not transferrable from one State to another—does that mean that in an area where there is a small minority population that a poor quality of applicants might get funded by the State in an attempt to use up all funding by the end of the fiscal year? Wouldn't a regional allocation be wiser rather than the State-by-State allocation?

Mr. KLEPPE. We don't have that problem with such a small figure nationwide, 37 million, where there will be a surplus. I suppose you have a position that could be argued, Mr. Chairman. I think there are many other factors that somebody could argue and should be considered in the formula for distributing direct funds. But I wanted the committee to know what we did, why we did it, and we are trying to get this agency back into that business and what happens in the future we may have all kinds of ingredients, but throughout my experience I have found that when you take a national formula and you try to apply it to a grant basis, or lending basis, or whatever it is, that you can draw more arguments than Carter has pills and therefore I don't see how anybody can argue against the fact that population is acceptable.

Now the distribution of population is a big argument. Minority concentration is much greater in some areas than others. There are other factors, you can take weather conditions, business climate, you can put all kinds of things in there but suffice it to say that we have gone the population route at this time.

Senator CRANSTON. Thank you both very much. Mr. Kleppe, it has been a pleasure to have you with us. It has been very helpful to the committee.

Mr. KLEPPE. Mr. Chairman, could I make one comment regarding our discussion on the disaster in California?

Senator CRANSTON. Yes.

Mr. KLEPPE. If I could make one comment and that is that we in SBA want to go on record again to refute the fact that we have not been administratively responsible in that very serious problem out there. We believe the record will justify that we have been responsive

to the conditions that have existed and we are going to try to the best we can within the framework of our legislative authority and what Congress intended.

Senator CRANSTON. Thank you very much.

(The following information was received for insertion in the record:)

BUSINESS LOAN AND PRIME CONTRACT LIMITATION REQUIREMENTS ACTUAL FISCAL YEAR 1971—ESTIMATED FISCAL YEAR 1972-74

[Dollars in millions]

	Actual fiscal year 1971	Budget estimates		
		Fiscal year 1972	Fiscal year 1973	Projected fiscal year 1974
Outstanding loans and commitments, start of year.....	\$1,737.8	\$2,297.0	\$3,041.7	\$4,105.9
PLUS—New loan approvals:				
7(a) business.....	772.5	1,099.0	1,635.0	2,250.0
Economic opportunity.....	90.7	86.0	90.0	105.0
Displaced business.....	39.3	39.0	50.0	81.0
Trade adjustment assistance.....	4.5			
8(a) prime contracts (net increase).....	8.5	3.7		
Total.....	915.5	1,227.7	1,775.0	2,436.0
MINUS—repayments and cancellations:				
7(a) business.....	314.2	436.8	653.2	845.3
Economic opportunity.....	32.0	36.0	45.3	50.5
Displaced business.....	10.1	10.2	12.3	18.2
Trade adjustment assistance.....				1.9
Total.....	356.3	483.0	710.8	915.9
Outstanding loans and commitments, end of year.....	2,297.0	3,041.7	4,105.9	5,626.0
Current limitation.....	3,100.0	3,100.0		174.0
PLUS—contingency reserve.....				
Recommended limitation.....				5,800.0
June 30, 1970				
Memorandum:				
Outstanding by program:				
7(a) business.....	\$1,420.8	\$1,879.1	\$2,541.3	\$3,523.1
Economic opportunity.....	150.6	209.3	259.3	304.0
Displaced business.....	153.6	182.8	211.6	249.3
Trade adjustment assistance.....		4.5	4.5	4.5
8(a) prime contracts.....	12.8	21.3	25.0	25.0
Current EOL sublimitation.....		300.0	300.0	
Recommended EOL sublimitation.....				450.0

DEVELOPMENT COMPANY LOAN LIMITATION REQUIREMENTS ACTUAL FISCAL YEAR 1971—ESTIMATED FISCAL YEARS 1972-74

[Dollars in millions]

	Actual fiscal year 1971	Budget estimates		
		Fiscal year 1972	Fiscal year 1973	Projected fiscal year 1974
Outstanding loans and commitments, start of year.....	\$291.4	\$322.2	\$369.3	\$434.0
PLUS—new loan approvals.....	56.2	77.0	100.0	155.0
MINUS—repayments and cancellations.....	25.4	29.9	35.3	39.0
Outstanding loans and commitments, end of year.....	322.2	369.3	434.0	550.0
Current limitation.....	500.0	500.0		150.0
PLUS—contingency reserve.....				
Recommended limitation.....				700.0

INVESTMENT COMPANY LOAN LIMITATION REQUIREMENTS ACTUAL FISCAL YEAR 1971—ESTIMATED
FISCAL YEAR 1972-74
[Dollars in millions]

	Actual fiscal year 1971	Budget estimates		Projected fiscal year 1974
		Fiscal year 1972	Fiscal year 1973	
Outstanding loans and commitments, start of year.....	\$284.3	\$316.0	\$388.9	\$484.6
PLUS—new loan approvals.....	47.7	78.0	100.0	84.1
MINUS—repayments and cancellations.....	16.0	5.1	4.3	3.3
Outstanding loans and commitments, end of year.....	316.0	388.9	484.6	565.4
Current limitation.....	450.0	450.0		
PLUS—contingency reserve.....				84.6
Recommended limitation.....				650.0

Senator CRANSTON. We now have Mr. Herbert Liebenson, legislative vice president, National Small Business Association, and Mr. Eric P. Schellin, trustee, National Small Business Association.

STATEMENTS OF HERBERT LIEBENSON, LEGISLATIVE VICE PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION, AND ERIC P. SCHELLIN, TRUSTEE

Senator CRANSTON. I would appreciate it if you could summarize. Your statement will be included in the record (see p. 48).

Mr. SCHELLIN. As Senator Cranston pointed out, I am the trustee of the National Small Business Association and also the executive vice president of the National Patent Council which is affiliated with the National Small Business Association which as you probably know represents about 40,000 members of the American small business community. We are here today to testify in favor, in support of Senator McIntyre's bill, S. 3166, to amend the Small Business Act and particularly to increase the loan ceilings and maintain various financial assistance programs.

The witness appearing before us did not comment on section 2 of S. 3166 but we certainly want to point out the great need for increasing the loan level from \$350,000 to \$500,000. It is my understanding that this loan level was first established with the establishment of the administration of SBA back in 1958.

We all know that in the last 14 years there have been considerable increases in cost and spiralling of the costs necessary to buy equipment and machinery for small business. I would like to summarize very quickly on the basis of being a small businessman who travels approximately 50,000 miles a year all across the country.

One of the problems I see is in connection with the fact that the loan level as maximized today at \$350,000 causes certain hardships. Senator Cranston's own State of California has been hard hit with cutbacks in aerospace industry. I have been taken into small rooms no larger than this one where I have been shown equipment, electronic circuitry, and have been told that all the equipment in this room costs more than \$500,000.

Now, in this room was a group of small business people. I am not referring to the gigantic aerospace industries but rather people who have been RIF'd from the aerospace industries, who have this tre-

mendous knowledge in the physical sciences, who have gone on record financially by taking their own savings first, and relatives savings second and have borrowed as far as they could to accumulate money to start a business.

To amass \$500,000 to buy equipment is a very serious and difficult proposition. I think the Congress should increase the maximum level to \$500,000 and beyond if possible so that these small business people who have put their life savings into small business can in fact buy the equipment necessary.

It is a well-known fact that it costs more than \$25,000 for equipment to provide a job for an individual. Now, the particular business I was alluding to, Senator, was in southern California and actually had approximately eight employees with \$500,000 worth of electronic equipment in one room.

I think this is certainly an average room. My special forte in this area is in the research and development because of my association with the National Patent Council. As the Small Business Administration has through its legislation—through its statutory requirements, has assisted small business in putting together what I consider to be extremely helpful books which provide information that has been accumulated by the incredible NASA and AEC programs over the last 15 years.

As you know, for awhile NASA was supporting approximately 25 percent of all the Ph. D. candidates in the physical sciences in the United States. These people were active in providing information which is now being accumulated in storehouses all over the United States. These storehouses are only of value if there can be an effective program of technology transfer. The few people that know about what is in the storehouses or even know that the storehouses exist, are such people as have been RIF'd out of the aerospace industries; who are familiar with this type of program, and I would say as an aside that the program is not being pushed sufficiently elsewhere.

Those people who have been RIF's from the aerospace program are utilizing these storehouses, but to utilize them requires tremendous expense and equipment and instruments, as I mentioned before.

We would submit, therefore, as the program of the National Small Business Association and the National Patent Council, that a larger loan level will encourage a new generation of product development from the information stored in the storehouses by AEC and NASA and there will be creation of new jobs from the technology in those storehouses.

The difficulties mentioned in the foregoing with small business is particularly acute with these newer businesses who can only go into production with large capital outlays.

We are dealing with people here that cannot produce a new product by operating out of their basement or garages. I know many small businesses 20 to 25 years ago were able to start that way. This is not the situation today. In order to get these people off the ground floor we will have to make large loans to them and provide access to such loans or go the other route which would be to go public.

As you know, the lowest level one can go public without running into a lot of SEC regulations is approximately \$500,000. I know of a company that just went public 2 weeks ago at \$480,000 and that would take them out of the small business contention, of course, but I would

submit that the decision to go public or to borrow money should not be made as a matter of or based upon the financing available.

Today at the \$350,000 maximum level the businessman makes a decision based on where he could obtain the most. He could go public, which is very expensive and has advantages and disadvantages or he could run the business independently which has advantages and disadvantages.

In conclusion, I would like the statement that was submitted by us to be made a matter of record.

Senator CRANSTON. Yes, it will appear in the record (see p. 48).

Mr. SCHELLIN. Thank you very much.

Senator CRANSTON. You refer to the present shortage of capital making it difficult or impossible to have small business conform to standards set by Congress and actions and so forth. Do you think Federal funds should be made to meet pollution standards and things like that?

Mr. SCHELLIN. Yes, as we indicated in our statement, the same rules apply to small business as well as large businesses. We don't want any difference, of course, in the rules except that the relative proportion frequently in establishing the conformities to the regulations that are being promulgated and will be promulgated in the future, the relative proportion is higher with regard to small business.

Consequently, the increase in level for maximum loans would assist in meeting those requirements.

Senator CRANSTON. I would like to ask you one question I asked Mr. Kleppe. Do you feel that there is a special need for a set-aside of funds to help small businesses in high technology fields to get into other fields related to what they are trained in.

Mr. SCHELLIN. Yes, we have testified to that before on a number of occasions and I have undertaken to give speeches on that. A set-aside program is always beneficial, particularly beneficial to small business with regard to the R. & D. work, which I am most familiar, that would be necessary in accomplishing our goals in alleviating pollution problems.

Again, specifically, the many physical scientists that have been trained who have received their Ph. D.s under the auspices of taxpayers' money should be given the tools and opportunity to contribute to the public welfare by being encouraged to enter into these areas. The only way they can do that is to have a financial climate which is attractive.

Senator CRANSTON. What other steps do you feel can and should be taken to help small technology firms get funds to start up?

Mr. SCHELLIN. Dissemination of information. Some time ago there was an act on the books entitled Technology Transfer, the idea was to encourage the States to set up organizations to provide information which are in these storehouses and elsewhere.

Senator CRANSTON. Did you have anything to add, Mr. Liebenson?

Mr. LIEBENSON. Yes, Senator. We have long recognized the need to inform small business of the many opportunities for contracts in Government. We have found that much of the problem was with the lack of information. The average small firm does not have the manpower or resources to cull out the product lines that would be of interest to the particular firms. Some months ago, our organization started a service called BEAM which stands for Bidder Early Alert

Message where we now and with the help of the Small Business Administration are able to provide information to small firms by wire as soon as the information is available from Government. A firm in California for example—will be notified of a contract possibility coming out of New York or some other area of the country. In fact, I think this week or early next week, we will be sending letters to your offices so you might inform some of your constituents of this service.

Senator CRANSTON. I would be delighted to do that. Thank you very, very much. You have been most helpful and I appreciate your being with us.

(The full statement of the National Small Business Association and the National Patent Council is as follows:)

STATEMENT OF ERIC P. SCHELLIN, TRUSTEE, NATIONAL SMALL BUSINESS ASSOCIATION AND NATIONAL PATENT COUNCIL

My name is Eric P. Schellin. I am a Trustee of the National Small Business Association and Executive Vice President of the National Patent Council which is affiliated with the National Small Business Association representing approximately 40 thousand members of the American small business community, encompassing more than 500 independent segments of industry and commerce.

We appreciate this opportunity to appear before your Subcommittee to state our position regarding pending legislation to amend the Small Business Act.

We are here to support Senator McIntyre's bill (S. 3166) to amend the Small Business Act and to increase loan ceilings and maintain various financial assistance programs.

Small business is at a vital point in its development because of growing concentration of business among fewer firms and growing authority within the Federal Government. All firms, no matter what their size, must conform equally to rules and regulations established by Congress. The relative cost for the small firm to conform to standards, is much greater than the cost for a larger firm—in effect, making small firms less competitive.

While the current economic indicators cause people to be optimistic about our immediate future, it is interesting to note that during the first three quarters of 1971 profits in small manufacturing companies continued to decline; in contrast, profits in larger corporations have reversed their trend of the year before and had begun to increase. In the first three quarters of 1971, the small corporations in manufacturing showed a 15% decline in before-tax earnings. During the same period, pre-tax earnings of large corporations, \$1 million and over in assets, increased 6.3%. Data indicates that manufacturing corporations with assets of \$50 million or more are continuing to increase their share of total corporate pre-tax earnings at the expense of their small counterparts.

After-tax profits for the first three quarters of 1971 showed a 7% increase for the large corporations. The rate of decline in after-tax earnings of small companies was greater than that of before-tax earnings. As a result, profits after taxes for the small manufacturing corporation are still over 66% behind where they were in 1969 while the large corporations, having now showed an upturn, are only 2.6% behind where they were in 1969 and based on the reports of the past few weeks, are now ahead.

We do not as yet know how an economic upturn will affect the small firm. However, unless it can continue to receive help from the Small Business Administration and unless tax relief is enacted by this Congress, it may not be in business long enough to experience future growth.

In the past few years the Congress of the United States has established standards for the business community in many areas. Among these are standards included in the Fair Packaging and Labeling Act; the Wholesome Meat Act; the Mine Safety Act; the Occupational Safety and Health Act and pollution controls. We commend the Congress for its action in providing for SBA loans to small business to comply with Federal standards. However, we have received reports that procedures to obtain such loans, particularly with respect to the Occupational Safety and Health Act, are quite cumbersome, when speed may be of the essence.

The present shortage of capital makes it extremely difficult—in some cases, impossible—for small business to conform to standards established by Congress or a Federal agency having administrative authority to establish regulations. The standards required under the Wholesome Meat Act, by way of example, caused such grave problems for small firms in the meat packing and processing industries that implementation of the Act had to be postponed for one year. Some firms were forced to close.

There are bills pending before Committees of Congress that would establish standards for consumer products. If Congress takes unto itself the responsibility of establishing standards for the business community, it should also grant the Small Business Administration this request for increases in their ceiling to grant loans on an emergency basis to small firms who must comply with those standards or else go out of business.

Our Association has followed the SBIC programs quite closely over the years since the Small Business Investment Act was passed. We believe that it has proven to be an effective way to assist small businesses who need equity capital and long-term loans.

We also are convinced that it has been a good investment for the Federal Government in providing loan guarantees for the initial capital to start-up businesses and additional equity for growing firms.

Small business is the potential real growth sector of our economy. This means both more workers and more taxes coming into the Federal Treasury.

It takes about \$25,000 in investment to create one job. Therefore I would now like to direct my comments to Sec. 2 of S. 3166—to increase the loan maximum from \$350,000 to \$500,000—with particular emphasis on the proposed legislation as it advances technological activities.

Before going into this in detail, it is perhaps unfortunate that it is necessary that this legislation must be considered. As consumers we know that the prices of goods have risen markedly. As a consequence it will be appreciated that the goods and services purchased by the loans entertained or participated in by the Small Business Administration (SBA) must also rise. It is well to recognize that the proposed legislation is certainly an outcrop of spiraling costs. Were this the only reason for asserting the necessity of increasing the magnitude of a loan commitment, my testimony could be concluded at this juncture.

Another cogent reason for this legislation goes to the heart of the very nature of the basic philosophy of the Congress in establishing a revolving loan program as first espoused in 15 U.S.C. 631. The purpose as you well know is to enhance the establishment of small business and to give further vitality to already ongoing small business. A definite problem, as seen from first hand experience, has been a consistent and prevalent fault of many small businesses, that is, to under capitalize. I have viewed with alarm many situations where small businesses go under as a result of insufficient funding or, if the small business does not actually perish, it hangs on by the slimmest of margins: in any event no taxes are collected and jobs are insecure.

For some inherent conservative reason, a small businessman disdains the borrowing of money. Of course, when there is no alternative, he will borrow but he will feel uncomfortable in the role of debtor. He, therefore, sets his sights on the amount required in an unusual manner. After first arriving at a figure which he actually needs, his conservatism takes hold, so he decreases the amount really needed by the expediency of subtracting what he has in his accounts receivable, the amount to be earned during the near term, and the amount saved by cutting costs here and there. By doing this the businessman believes his loan application will be more favorably received. He also thinks that obtaining the maximum current figure of \$350,000 is well nigh impossible, so he sets his sights well below that figure. If any of the cash flow relied upon by the small businessman is temporarily interrupted, the whole business may come tumbling down as unpaid bills begin to pile up. By increasing the maximum level to a total loan to \$500,000, the philosophy of the small businessman might not change but he will tend to set his sights closer to that maximum level and in the process come closer to a better capitalization posture.

Another cogent reason for increasing the maximum loan level to \$500,000 is the relationship with the small businessman's quest for capital by way of going public modestly under the minimum requirements imposed by Securities and Exchange Commission regulations, that is, \$500,000. As a result many companies go public with an offering totaling about \$480,000. The expense to go public is onerous, being approximately \$50,000. There are advantages that outweigh the

costs, such as not having to pay back the money raised. There are disadvantages, such as facing the loss of control of the business. Whatever the decision that must be made between opting for a loan or equity financing, the consideration as to amount possibly available by either route would not enter into the consideration with the increase in the maximum loan level.

In the beginning, I alluded to the need for increasing the loan level purely on the grounds of inflationary costs. Another reason for the need for borrowing more money is the necessity to provide more capital investment for each employed worker. There is, therefore, a real increase in capital requirements. Today, the worker operates equipment that is extremely sophisticated and complex—and, of course, expensive. Also, workers are now working with instruments in research and development establishments that were not even in existence a few years ago. The technical journals are full of projects carried out with the most elaborate instruments of our electronic age. Any research and development company couldn't possibly exist without the proper instruments at its disposal. It is probably in this area that I possess the greatest personal knowledge.

Considering the research and development area further, it is no secret that there has been a tremendous cut back in the many aerospace programs resulting in a diminution of the need for those trained in the physical sciences. During the Depression of the 1930's, there was an increase in the number of technological advances accomplished. If necessity is the mother of invention, adversity is her midwife. While I do not presume to know what total effect the technological advances had on the economy at that time; some plus consideration must be given thereto. From personal experience in a geographical area in the U.S. particularly, hard hit by research and development decreases, I have seen an increase in activity in obtaining patents which can be stated to be a measure of increased technological activity. A number of discharged employees from large corporations in aerospace industry have started fledgling research and development companies, initially, with their own savings; then with the money of their relatives and friends and finally from funds from the outside. I expect that from these small R & D efforts will come new technological advances and practical utilization taken from the tremendous storehouse of basic knowledge held by NASA & AEC, for instance. Both agencies maintain, by law, centers for the accumulation of technological data, which is the result of thousands of hours of research paid for by the American taxpayer. This knowledge is only valuable if there is proper technology transfer. The very individuals who are now engaged in new R & D establishments are the people most conversant with these centers and the assets they retain.

It is submitted that a larger loan level will encourage a new generation of product development—and the creation of new jobs—from the technology storehouses. The difficulties mentioned in the foregoing with small business is particularly acute with these newer businesses who can only go into production with large capital outlays. I had occasion to recently visit a small electronic company of possibly 15 employees with the forte of being able to build prototype microelectronic circuitry to the specification of large corporations. I was told that one room alone contained \$500,000 worth of equipment to build and test microelectronic equipment. In my mind there is no doubt that there is a need for S. 3166.

Thank you for this opportunity to present our views.

Senator CRANSTON. Our next witness is James A. Gavin, legislative director, National Federation of Independent Business.

Thank you very much for your presence. Your national headquarters is in San Mateo, Calif.?

**STATEMENT OF JAMES A. GAVIN, LEGISLATIVE DIRECTOR,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

Mr. GAVIN. Yes; that is correct.

Senator CRANSTON. I would appreciate very much if you could summarize in not more than 5 minutes. I would appreciate it.

Mr. GAVIN. Yes. Fine.

I would like to thank you for the opportunity to be here to testify in behalf of our 309,000 member firms.

For the interest of this committee we have attached an appendix to our testimony which gives a breakdown of membership in the 15 States represented by the members of this committee.

For your information, we have in those 15 States 129,000 member firms. They employ close to 1 million people and they account for \$22.1 billion in gross annual sales which we feel is rather substantial.

Regarding S. 3166 and its proposed amendments to amend the Small Business Act of 1953 the National Federation of Independent Business approves the increase from \$3.1 billion to \$5.8 billion in the SBA revolving fund ceiling.

We feel this would provide a reliable source of long-term low-interest capital. We feel it is much needed to stimulate the economic recovery which also is required to bolster confidence in the Small Business Administration.

As to the other new ceiling limits we approve of those which deal with the Small Business Investment Act of 1953 and the Economic Opportunity Act of 1964.

Regarding the increase in the loan ceiling from \$350,000 to \$500,000 we do have some doubts as to the need for it.

At present the average SBA 7(a) loan in fiscal year 1971 was only \$67,000. Judging from the composition of our members, 84 percent of our members have gross assets under a half a million dollars per year; 87 percent employ less than 20 persons. So we feel there wouldn't be that much of a demand for a loan of that size.

Also our experience points to availability, not the amount, as the key to SBA success. However, we do feel there is no need to penalize an enterprising businessman if there is a legitimate need.

So, for this reason, we recommend approval if amended with certain adequate safeguards.

The committee's statement of intent for SBA to assist as many small firms as possible, this has to be borne in mind. We feel that any application made for a loan of that size should be scrutinized and evaluated based on the needs of the entire small business community.

Above all, we feel that any loan of that size should be strictly in the form of a guarantee and no direct loan money should be used under any circumstances.

At this point, Mr. Chairman, I would like to comment on the SBA's small business 7(a) business loan program. Since the passage of the Small Business Act in 1953 the thrust of SBA's 7(a) business loan program has been seriously changed leading us to believe that the original intent and purpose of Congress has been distorted and negated.

The aim of this program, as detailed by Congress and explained time and again by this committee, is simply to provide the small businessman with a reliable source of long term, low-interest capital.

To achieve this goal the act empowered the agency to grant three distinct types of business loans—direct, immediate participation, and guaranteed.

Quite understandably the desirability of each of these loans is directly related to the different interest rates they carry. The most difficult to obtain, direct loans, carry only a 5.5-percent rate while guarantee loans, by far the most plentiful bear the full rate prevalent on the market. Immediate participation loans fall somewhere between these two extremes.

Obviously the least desirable loan from a small businessman's standpoint is the bank guarantee. It provides long-term capital but, at the same time, it seriously damages their competitive position, forcing them to pay well over the prime rate that is exclusively reserved for big business.

Regrettably, SBA has made the privilege of borrowing money on its name very expensive.

Guaranteed loans might, as some knowledgeable people have suggested, make funds more readily available to marginal borrowers. We have grave doubts about this. Instead, we have found that many banks, especially the smaller nonmetropolitan ones, are reluctant to participate because the amounts involved are too insignificant to justify the required redtape and paperwork.

In addition, there is nothing to prevent a lending institution from seeking and obtaining a 90-percent Government guarantee on a loan that it would have normally granted.

From a banker's viewpoint this is simply a sound business practice, but we seriously doubt that SBA was created to minimize the risks of our banking industry.

Since 1964 the pattern of SBA loans clearly shows that it has consciously worked to expand its bank guarantee programs. Between the latter year and fiscal year 1968 this program grew approximately 770 percent in the number of loans approved and by 115 percent in total dollar volume.

From fiscal year 1968 to the end of fiscal year 1971 the number of loans granted increased from 3,676 to 11,894, a gain of nearly 325 percent. During the same period the total dollar volume involved rose by 346 percent, from \$236.3 million to \$817.0 million.

On the surface this rapid expansion appears to be a definite gain for the small business community and, as such, very laudable. But it has, in reality, been achieved only by sacrificing the intent and purpose of Congress.

The Small Business Administration was created as a lending institution but, today, it is an agency that does little more than guarantee the loans made by the Nation's banks.

The Federation is distressed by the deliberate transformation of the lending policies of SBA and it will continue to work for their reversal.

In the meantime, however, we strongly recommend that this committee seriously consider amending the Small Business Act so that the agency can once again offer the small business community long term low-interest capital.

This can be achieved by regulating the relationship between the size of the SBA guarantee, the amount of exposure undertaken by the lending institution and the rate of interest it is permitted to charge.

We are willing to work with interested parties to find a solution. However, we would like to offer three possible alternatives to the committee at this time.

1. Amend the Small Business Act to allow SBA to guarantee a borrower's indebtedness up to 100 percent of the principal, as is the case for both the Lockheed and Economic Opportunity loans, stipulating that the lending institution, in return for this security, charge no more than the prime rate.

2. Amend the Small Business Act to require the lending institutions to charge the prevalent prime interest rate on that part of the loan guaranteed by SBA, which is presently 90 percent, and allowing it to charge the prevailing market rate on the remainder.

3. Amend the Small Business Act to regulate the relationship between the bank's exposure to loss and the amount of interest it can levy. The latter would be tied to a sliding scale determined by the degree of risk involved in the loan.

A dependable source of long term low-interest capital is essential to the speedy recovery and future economic health of the Nation's 5½ million small businesses. At present it is questionable whether the Small Business Administration can provide the impetus needed to secure these goals. Therefore, in concluding, we ask this committee to take our recommendations for revitalizing SBA under due consideration.

Mr. Chairman, I thank you for the opportunity to testify here today.

Senator CRANSTON. Thank you very much. We will take your advice under consideration and we will refer your comments to the committee.

Mr. GAVIN. Mr. Chairman, if I can make one last comment, what is puzzling to me, on a \$100,000 guaranteed loan, the Government, SBA, will guarantee 90 percent of that which represents \$90,000. But in effect they are really giving 100-percent guarantee on that \$90,000. So why not go all the way and guarantee the other \$10,000? By so doing the small businessman can borrow at prime rates.

We do hope that you adopt that because it could be extremely beneficial to the small businessman.

Senator CRANSTON. That is certainly an idea worth exploring.

Remember, the 7(a) funds, do you have any recommendation as to how you allocate that to each of the three main programs under 7(a)?

Mr. GAVIN. Yes. We would like to see one of two things. Either the program should return to its—in the direct loans it should be returned to the 1968 figure which is something like \$398 million, I think was allocated for that purpose, and we hope the greater emphasis is placed on the direct loans.

But if the SBA wants to deemphasize and abandon this direct loan program we will go along. We think it is fine if they want to continue to place the emphasis on the guaranteed loan if they go along with those provisions that we have mentioned.

If they went along with our suggestions here they could almost completely abandon the direct loan program. If they give 100-percent or 95-percent guarantees on these moneys.

Senator CRANSTON. You don't have any specific percentage allocation that you would suggest, then?

Mr. GAVIN. As far as guarantee versus the other?

Senator CRANSTON. Yes; for the various programs.

Mr. GAVIN. Rather than speak in percentages I would like to see it returned to the \$400 million for direct loan purposes which was in effect in 1968. But, like I said, I think we, the small businessman, would be delighted if SBA would guarantee up to 100 percent on these other loans.

The point that is a mystery to me is that if GE or big business makes a loan they can borrow at prime, yet the small man goes in there and

although he has a 90-percent backing by the Federal Government, whose credit I think is far superior to that of any of these big businessmen—

Senator CRANSTON. That is a point of general concern. I recognize that. Well, thank you very much. You have been very helpful.

Mr. GAVIN. Thank you.

(The full statement of Mr. Gavin and a letter from the Smaller Business Association of New England follow:)

STATEMENT OF JAMES A. GAVIN, LEGISLATIVE DIRECTOR OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman and distinguished members of the Committee. I am James A. Gavin, Legislative Director of the National Federation of Independent Business. In behalf of our 309,000 member firms across the country, I wish to thank you for this opportunity to testify on S. 3166.

The National Federation of Independent Business, founded in 1943, has grown into the largest single member business organization in the United States. Our member firms represent a true cross section of the nation's small business community—retailing, wholesaling, manufacturing, contract construction and the service trades.

Small business, as I am sure everyone present would agree, plays a vital role in the American economy. A graphic demonstration of this can be obtained by examining the important part played by N.F.I.B. members in the economics of the various states represented by the members of this Committee.

In those 15 states the Federation has 128,529 member firms. They employ nearly one million people and have average gross annual sales of approximately 22.1 billion dollars. A state-by-state breakdown of these figures is attached for the Committee's appraisal.

S. 3166

The National Federation of Independent Business is pleased to state that it supports the proposal before this Committee to increase the ceiling for SBA's revolving fund. Congressional approval of this legislation will insure an adequate source of capital for the nation's independents, brightening their prospects for a speedy economic recovery and bolstering their confidence in the Small Business Administration.

It is our understanding that this increase—from \$3.1 to \$5.8 billion—is based on a projection of SBA's needs through Fiscal 1974, and we commend it as a step in the right direction. It was sorely needed, especially when we look back upon the situation that the Agency faced in April, 1971.

Of course, NFIB is aware that this rapid increase in the ceiling is due, for the most part, to the tremendous expansion that has occurred within the Agency's Guarantee Loan Program. Between Fiscal 1969 and 1971, this program has grown 325% in the number of loans granted, with a 346% increase in dollar volume—from \$236.3 to \$817.0 million. This is regrettable, because it has only been accomplished by sacrificing the rest of the 7(a) program—which provides Direct and Immediate Participation funds.

Also included in S. 3166 are new ceiling limits for certain sections of the Small Business Investment Act of 1958 and the Economic Opportunity Act of 1964. These complement the increase in the revolving fund and seem entirely justified.

The Federation has some serious reservations concerning the wisdom of the proposed amendment of Section 7(a) of the Small Business Act, which would raise the maximum amount borrowable to \$500,000.

There are several factors that enforce our doubts about the need of small business for loans of this size. The most obvious is that the average SBA 7(a) business loan granted during Fiscal 1971 was only \$67,000. Next, the composition of our own membership—with 84% of the firms grossing less than \$500,000 per year and 87% with fewer than 20 employees—strongly indicates that the vast majority of independents have little need for such a large sum. And last, NFIB's experience in this area suggests that it is the smaller firms that are most dependent upon SBA assistance. This means that it is availability, not the amount, of a loan that counts.

The Federation realizes that there will be exceptions in each of these categories. Legitimate instances where a \$500,000 loan is both necessary and justi-

fied. And we would not want to penalize any businessman simply because he is more imaginative or enterprising than his neighbor. Therefore, we recommend approval of the amendment if adequate safeguards can be written into the legislation.

The Committee could achieve this by stating that it is the intent of Congress to provide financial assistance to as many small firms as SBA resources will allow. With its position clearly announced, it would then direct the Agency to scrutinize applications for large loans, basing its evaluation upon the proportional needs of the nation's small business community. In addition, we believe that the Congress should prohibit the use of SBA Direct funds in any loan above the present ceiling.

Mr. Chairman, fully understanding the necessity of limiting the length of our remarks, we would, at this point, like to discuss a matter that has long been a grave concern to the Federation and the nation's independent businessmen.

Since the passage of the Small Business Act in 1953, the thrust of SBA's 7(a) business loan program has been seriously changed, leading us to believe that the original intent and purpose of Congress has been distorted and negated. The aim of this program, as detailed by Congress and explained time and again by this Committee, is simply to provide the small businessman with a reliable source of long term, low interest capital. To achieve this goal the Act empowered the Agency to grant three distinct types of business loans—Direct, Immediate Participation and Guaranteed.

Quite understandably, the desirability of each of these loans is directly related to the different interest rates they carry. The most difficult to obtain, Direct loans, carry only a 5½% rate, while Guarantee loans, by far the most plentiful, bear the full rate prevalent on the market. Immediate Participation loans fall somewhere between these two extremes. When the interest charged by both SBA and the participating bank is combined, the market rate is substantially reduced.

Obviously, the least desirable loan from a small businessman's standpoint, is the Bank Guarantee. It provides long term capital, but, at the same time, it seriously damages their competitive position, forcing them to pay well over the prime rate that is exclusively reserved for big business. Regrettably, SBA has made the privilege of borrowing money on its name very expensive.

Guaranteed loans might, as some knowledgeable people have suggested, make funds more readily available to marginal borrowers. We have grave doubts about this. Instead, we have found many banks, especially the smaller, non-metropolitan ones, reluctant to participate, because the amounts involved are too insignificant to justify the required paperwork and red tape. In addition, there is nothing to prevent a lending institution from seeking and obtaining a 90% Government guarantee on a loan that it would have normally granted. From a banker's viewpoint, this is simply a sound business practice, but we seriously doubt that SBA was created to minimize the risks of our banking industry.

Since 1964, the pattern of SBA loans clearly shows that it has consciously worked to expand its bank guarantee programs. Between the latter year and Fiscal 1968, this program grew approximately 770% in the number of loans approved and by 115% in total dollar volume. From Fiscal 1968 to the end of Fiscal 1971, the number of loans granted increased from 3,676 to 11,894—a gain of nearly 325%. During the same period the total dollar volume involved rose by 346%—from \$236.3 million to \$817.0 million.

On the surface, this rapid expansion appears to be a definite gain for the small business community, and, as such, very laudable. But, it has, in reality, been achieved only by sacrificing the intent and purpose of Congress. The Small Business Administration was created as a lending institution, but today it is an Agency that does little more than guarantee the loans made by the nation's banks.

The Federation is distressed by this deliberate transformation of the lending policies of SBA, and it will continue to work for their reversal. In the meantime, however, we strongly recommend that this Committee seriously consider amending the Small Business Act so that the Agency can once again offer the small business community long term, low interest capital.

This can be achieved by regulating the relationship between the size of the SBA Guarantee, the amount of exposure undertaken by the lending institution and the rate of interest it is permitted to charge. We are willing to work with all interested parties to find a solution. However, we would like to offer three possible alternatives to the Committee at this time.

(1) Amend the Small Business Act to allow SBA to guarantee a borrower's indebtedness up to 100% of the principle, as is the case for both the Lockheed and Economic Opportunity loans, stipulating that the lending institution, in return for this security, charge no more than the prime rate.

(2) Amend the Small Business Act to require the lending institutions to charge the prevalent prime interest rate on that part of the loan guaranteed by SBA, and allowing it to charge the prevailing market rate on the remainder.

(3) Amend the Small Business Act to regulate the relationship between the bank's exposure to loss and the amount of interest it can levy. The latter would be tied to a sliding scale determined by the degree of risk involved in the loan.

A dependable source of long term, low interest capital is essential to the speedy recovery and future economic health of the nation's five and one-half million small businesses. At present, it is questionable whether the Small Business Administration can provide the impetus needed to secure these goals. Therefore, in concluding, we ask this Committee to take our recommendations for revitalizing SBA under due consideration.

The National Federation of Independent Business considers it a privilege to have had the opportunity to appear and testify before this distinguished Committee. We stand ready to be of assistance at any time in our mutual efforts on behalf of small business.

Mr. Chairman, should there be any questions from the Committee regarding my testimony, I shall be happy to try to answer them.

Thank you.

APPENDIX

	Total members	Number of employees	Average gross sales
Alabama.....	3,189	30,811	\$605,915,000
Wisconsin.....	10,175	66,225	1,392,795,000
New Jersey.....	5,600	35,413	807,137,500
New Hampshire.....	2,079	17,725	325,855,000
Minnesota.....	8,357	77,607	1,775,540,000
California.....	28,137	176,796	4,460,860,000
Illinois.....	9,276	58,751	1,348,012,500
Georgia.....	6,705	59,513	1,261,965,000
Texas.....	20,424	171,562	3,717,472,500
Utah.....	1,980	8,692	161,637,500
Massachusetts.....	8,103	82,872	1,745,427,500
Oregon.....	4,622	38,856	869,762,500
Delaware.....	952	8,901	182,797,500
Tennessee.....	5,791	59,277	1,370,125,000
Ohio.....	13,139	102,847	2,048,640,000
	128,529	995,848	\$22,074,962,500

SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC., February 22, 1972.

Mr. T. J. ODEN
United States Senate
Banking, Housing & Urban Affairs Committee
Washington, D.C.

DEAR MR. ODEN: I have just discussed with President Roland L. Sutton, Jr. our telephone conversation of Friday morning regarding SBANE's participation in the hearings scheduled for March 9 on increasing the SBA loan ceiling. Frankly, it appears doubtful that the Association will be able to make an appearance.

SBANE has been on record for some time advocating an increase from \$250,000 to \$500,000 as I believe was the original upper limit.

A great many SBANE members have felt that the agency should have the means to meet the larger financial needs of the established fast-growing small business. Many people have received the impression in recent years that the SBA loan program has emphasized quantity of loans rather than quality.

The Sub-Committee's recommendations of raising the ceiling would in our opinion put the emphasis on those companies that have reached initial plateaus of success that are now faced with second phase financing.

In testifying before the House Small Business Committee, July 23, 1969, the then President of SBANE, Douglas S. Dillman, cited two studies one by a Harvard graduate student, the other by Sam Harris Associates for the SBA which supported the theory that quantitative emphasis starting marginal businesses has been wasteful.

I am enclosing copies of SBANE's testimony although presented two and one half years ago, is still very timely. I regret that we will be unable to appear before the Sub-Committee but we are hopeful the enclosed information will be of some use.

Cordially yours,

LEWIS A. SHATTUCK, CAE,
Executive Vice President.

Senator CRANSTON. Our final witness is Walter B. Stults, executive vice president, National Association of Small Business Investment Companies.

Again I would like to request you to hold your testimony to 5 minutes.

**STATEMENT OF WALTER B. STULTS, EXECUTIVE VICE PRESIDENT,
NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT
COMPANIES**

Mr. STULTS. Thank you, Mr. Chairman.

We are most directly interested in that section of Senator McIntyre's bill which would raise from \$450 million to \$650 million the ceiling on SBA financial assistance to SBIC's. We understand that SBA has now utilized approximately \$315 million of its authorization; its plan for the remainder of fiscal year 1972 and for fiscal year 1973 would more than exhaust the \$450 million ceiling under present law.

We urge Congress to take affirmative action now on the increase, since certainty and continuity are essential to the proper functioning of the SBIC industry. Throughout the history of the SBIC program, its potential has been throttled by the lack of assurance that the Small Business Administration could actually disburse the loans to which SBIC's were entitled under their basic legislation. Many good licensees have left the program for that reason alone; many other SBIC's were not formed because SBA could not tell their sponsors that the SBA leverage would be available when the SBIC needed it to fulfill its commitments to small business concerns.

A major milestone in the SBIC program was passed last year when Public Law 92-213 became effective; that crucial legislation permits SBA to provide financing to qualified SBIC's by guaranteeing debentures issued by those licensees. The industry hailed the passage of that act and we have seen more interest in forming new companies and in expanding existing SBIC's than at any time during the preceding 8 or 9 years.

But this momentum would be lost if prospects for continued SBA funding were clouded by the approach to the ceiling on loans and guarantees issued to SBIC's by SBA. For that reason, it is most important that action be taken now, and I am delighted that the House Small Business Subcommittee is holding hearings on identical legislation April 11 through 13. As you know, SBIC operates within a long term frame; our loans must be made for a minimum period of 5 years and our investments usually taken even longer to mature and roll over.

Thus, 15 months is a relatively short period for SBIC managers and we, as I said, estimate that SBA will use up all of its authority for our program by the end of June 1973—about 15 months away.

Incidentally, the revolving fund for SBIC's has not been increased since October 1967. It is not that our industry could not have utilized more dollars before this—it is only that SBA has not been able to obtain appropriated funds for direct loans.

In the rest of my statement, Mr. Chairman, I support the increases in the other ceilings on the revolving funds. I say that NASBIC has taken no position on the lifting from \$350,000 to \$500,000 under 7(a) authority.

That concludes my statement.

Senator CRANSTON. Thank you very much. I have just one question to ask you.

Do you have any information you could give us on the particular problems that SBIC encounters when it seeks to help high technology firms get going?

Mr. STULTS. I think one of our sources of pride over the last 12 years has been the extent to which SBIC's have been in the forefront of investing in new businesses or going concerns which have gone into areas of high technology. Throughout the entire space period of the 1960's SBIC's assisted firms who were in the forefront of U.S. launches to the moon and to outer space. There is high glamour in it but there is terribly high risk also. You have seen in your own State the problems faced even by giant diversified corporations. I can think right now, as an example, a small firm in California which was founded with the assistance of a substantial investment by an SBIC, and it developed and produced essential items for our rockets and modules.

As I say, that company was a source of pride to our industry but it never made out very well as far as the SBIC was concerned. The NASA cutbacks came and the small business was much too dependent upon one product. It was not a good investment in the long run in the sense that it did not make lots of money for the SBIC; but that, I think, perhaps is a typical example of one of the problems that comes with investments in high technology firms. A man who makes a technological advance today and gets financed by an SBIC or by the public may find that his market is completely gone tomorrow because someone else has come in with a new super gadget that displaces him from the marketplace.

Senator CRANSTON. That is a helpful outline of what you run into.

Mr. STULTS. I might say, Senator, that our association is working closely with the Council of Economic Advisors and with the technology advisors to the President in an effort to find ways to encourage SBIC's to do even more in this area. We recognize that it probably has more impact long range on our national economy than any other single role that we could play. The risk factor is something SBIC's were established to take. We think we have a major role.

Senator CRANSTON. Thank you very much. You have been very helpful.

(The full statement of Mr. Stults follows:)

STATEMENT OF WALTER STULTS, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES

Mr. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I am Walter Stults, Executive Vice President of the National Association of Small Business Investment Companies.

Thank you for giving me this opportunity to testify in favor of S. 3166 on behalf of our Association and the SBIC industry.

Naturally, we are most directly interested in that section of Senator McIntyre's bill which would raise from \$450-million to \$650-million the ceiling on SBA financial assistance to SBICs. We understand that SBA has now utilized approximately \$315-million of its authorization; its plans for the remainder of fiscal 1972 and for fiscal 1973 would more than exhaust the \$450-million ceiling under present law.

We urge Congress to take affirmative action now on the increase, since certainty and continuity are essential to the proper functioning of the SBIC industry. Throughout the history of the SBIC program, its potential has been throttled by the lack of assurance that the Small Business Administration could actually disburse the loans to which SBICs were entitled under their basic legislation. Many good licensees have left the program for that reason alone; many other SBICs were not formed because SBA could not tell their sponsors that the SBA leverage would be available when the SBIC needed it to fulfill its commitments to small business concerns.

A major milestone in the SBIC program was passed last year when Public Law 92-213 became effective; that crucial legislation permits SBA to provide financing to qualified SBICs by guaranteeing debentures issued by those licensees. The SBIC industry hailed the passage of that Act and we have seen more interest in forming new companies and in expanding existing SBICs than at any time during the preceding eight or nine years.

But this momentum would be lost if prospects for continued SBA funding were clouded by the approach to the ceiling on loans and guarantees issued to SBICs by SBA. For that reason, it is most important that action be taken now, so that long-range planning can be undertaken both by SBA and by the SBICs themselves. As you know, we operate within a long-term frame; our loans must be made for a minimum period of five years and our investments usually take even longer to mature and roll over. Thus, fifteen months is a relatively short period for SBIC managers and we estimate that SBA will use up its authority for our program by the end of June 1973—about fifteen months away.

Incidentally, the revolving fund for SBICs has not been increased since October 1967. It's not that our industry could not have utilized more dollars before this—it is only that SBA has not been able to obtain appropriated funds for direct loans, or guarantee power for indirect funding, during those long years.

Before concluding my statement, Mr. Chairman, I would like to say a word in favor of the other provisions of Section 1 of S. 3166. We believe that the other three ceiling increases are also warranted and in the best interests of the American small-business community. We have some awareness of the Section 7, Title IV, and Section 502 loan programs conducted by SBA, since SBICs often arrange entire financing packages which might include assistance by a local development loan under Section 502 of the Small Business Investment Act, as well as a loan from SBA under Section 7 of its Act or Title IV of the Economic Opportunity Act. In such a situation, SBA, commercial banks, and local development companies would take a senior position in the financing package, while the SBIC would usually provide the high-risk, subordinated dollars necessary to make the whole funding feasible. We have seen in the past how harmful it is when SBA runs into a funding crisis which arises when its lending ceilings are exhausted.

SBICs have also worked with small firms, usually minority-owned, in helping finance Government contracts awarded under Section 8(a) of the Small Business Act. Here again it would be disruptive if SBA were not able to plan its contracting program properly because of an approach to its revolving fund ceiling.

Unfortunately, I am not able to comment upon Section 2 of S. 3166—a provision which would increase the maximum SBA loan from \$350,000 to \$500,000—since I have not been able to consult the members of our Board of Governors on this subject.

One last word: we thank the Chairman and the members of this Subcommittee for their long-time leadership in helping small business investment companies become more effective in channeling equity capital and long-term loans to small business.

That concludes my statement.

Senator CRANSTON. That concludes our hearing for today. I thank each of you for your presence, your interest, and for your helping us.

We now stand in recess, subject to the call of the Chair.

(Whereupon, at 12 noon, the subcommittee was adjourned, subject to the call of the Chair.)

