

SUPERSTORM SANDY RELIEF AND DISASTER LOAN
PROGRAM IMPROVEMENT ACT OF 2015

JUNE 25, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CHABOT, from the Committee on Small Business,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 208]

The Committee on Small Business, to whom was referred the bill (H.R. 208) to require the Administrator of the Small Business Administration to establish a program to make loans to certain businesses, homeowners, and renters affected by Superstorm Sandy, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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I. AMENDMENT

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Superstorm Sandy Relief and Disaster Loan Program Improvement Act of 2015”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 2012, Superstorm Sandy caused substantial physical and economic damage to the United States, and New York in particular.

(2) For businesses and homeowners, the primary means of obtaining long-term Federal financial assistance in the wake of disasters such as Superstorm Sandy is through the Small Business Administration’s Disaster Loan Program.

(3) With regard to the Small Business Administration’s operation of the Disaster Loan Program after Superstorm Sandy, the Government Accountability Office found that the Administration did not meet its timeliness goals for processing business loan applications.

(4) According to the Government Accountability Office, the Small Business Administration stated that it was challenged by an unexpectedly high volume of loan applications that it received early in its response to Superstorm Sandy.

(5) As a result, many businesses and homeowners affected by Superstorm Sandy were unable to apply for financing from the Small Business Administration.

SEC. 3. REVISED DISASTER DEADLINE.

Section 7(d) of the Small Business Act (15 U.S.C. 636(d)) is amended by adding at the end the following:

“(8) DISASTER LOANS FOR SUPERSTORM SANDY.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

“(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

“(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

“(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.”.

SEC. 4. USE OF PHYSICAL DAMAGE DISASTER LOANS TO CONSTRUCT SAFE ROOMS.

Section 7(b)(1)(A) of the Small Business Act (15 U.S.C. 636(b)(1)(A)) is amended by striking “mitigating measures” and all that follows through “modifying structures” and inserting the following: “mitigating measures, including—

“(i) construction of retaining walls and sea walls;

“(ii) grading and contouring land; and

“(iii) relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters”.

SEC. 5. COLLATERAL REQUIREMENTS FOR SMALL BUSINESS CONCERNS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting after paragraph (9) the following:

“(10) COLLATERAL REQUIREMENTS FOR SMALL BUSINESSES.—In the case of a loan made pursuant to this subsection in an amount not greater than \$250,000, the Administrator may not require a borrower to pledge his or her primary residence as collateral if—

“(A) other collateral exists, including assets related to the operation of a business; and

“(B) such an option does not delay the Administrator’s processing of disaster applications for a disaster.”.

SEC. 6. REDUCING DELAYS ON CLOSING AND DISBURSEMENT OF LOANS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is further amended by inserting after paragraph (10) (as added by section 5) the following:

“(11) REDUCING CLOSING AND DISBURSEMENT DELAYS.—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.”.

SEC. 7. INCREASING TRANSPARENCY IN LOAN APPROVALS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is further amended by inserting after paragraph (11) (as added by section 6) the following:

“(12) INCREASING TRANSPARENCY IN LOAN APPROVALS.—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.”.

SEC. 8. SAFEGUARDING TAXPAYERS' INTERESTS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is further amended by inserting after paragraph (12) (as added by section 7) the following:

“(13) ENSURING ACCOUNTABILITY IN LOAN APPROVALS.—The Administrator shall establish requirements for the approval of economic injury disaster loan assistance made available pursuant to paragraph (2), which shall include the review of applicant eligibility and shall require that all supporting documentation is submitted prior to loan approval. The Administrator shall require that personnel involved in the approval of such loans be trained on such procedures.”.

SEC. 9. DISASTER PERFORMANCE MEASURES.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is further amended by inserting after paragraph (13) (as added by section 8) the following:

“(14) REPORTING ON DISASTER PERFORMANCE MEASURES.—The Administrator shall report the average processing time for all other disaster loan applications, including disaggregated data on disaster loan applications that were declined by the Administration's automated disaster processing system and applications in which the Administrator performed loss verification. For each disaster described in paragraph (2), the Administrator shall report such average processing times on its website and to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.”.

SEC. 10. DISASTER PLAN IMPROVEMENTS.

The Administrator of the Small Business Administration shall revise the comprehensive written disaster response plan required in section 40 of the Small Business Act (15 U.S.C. 657l), or any successor thereto, to incorporate the Administration's response to a situation in which an extreme volume of applications are received during the period of time immediately after a disaster, which shall include a plan to ensure that sufficient human and technological resources are made available and a plan to prevent delays in loan processing.

SEC. 11. REPORT TO CONGRESS ON IMPLEMENTATION OF CERTAIN PROGRAMS.

(a) INITIAL REPORT.—The Administrator of the Small Business Administration shall report to Congress not later than 30 days after the date of enactment of this Act on the implementation and status of the private disaster loan program established in section 7(c) of the Small Business Act (15 U.S.C. 636(c)), the Immediate Disaster Assistance program established in section 42 of such Act (15 U.S.C. 657n), and the expedited disaster assistance business loan program established in section 12085 of the Small Business Disaster Response and Loan Improvements Act of 2008 (15 U.S.C. 636j).

(b) REQUIRED CONSULTATION WITH DEPOSITORY INSTITUTIONS AND CREDIT UNIONS.—The Administrator shall require the Associate Administrator for the Office of Disaster Assistance to consult with depository institutions (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and credit unions regarding their potential participation in any of the programs described in subsection (a).

(c) REPORT ON CONSULTATION.—Not later than 6 months after date of enactment of this Act, the Administrator shall report to Congress on the consultation required under subsection (b).

Amend the title so as to read:

A bill to improve the disaster assistance programs of the Small Business Administration.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 208, the “Superstorm Sandy Relief and Disaster Loan Program Improvement Act of 2015” is to amend the Small Business Act so that those affected by Superstorm Sandy (which made landfall in October 2012) and were denied the ability to file due to administrative backlogs created by the Small Business Administration (SBA) can file applications for disaster loans. This will ensure that those in the disaster areas will be able to rebuild and revitalize the adversely affected communities. H.R. 208 also makes technical corrections and modernizations to SBA’s Disaster Loan program to ensure SBA is more effective in helping disaster victims obtain loans.

III. BACKGROUND AND NEED FOR LEGISLATION

On October 29, 2012 at approximately 8 p.m. EDT, Hurricane Sandy (colloquially referred to as “Superstorm Sandy” due to its size) made landfall approximately 10 kilometers southwest of Atlantic City, NJ, as a category 1 hurricane.¹ As the National Weather Service noted, the track of Hurricane Sandy constituted about the worst case scenario; storm surge combined with the normal high tide created a scenario for extreme inundation of coastal regions in Connecticut, New Jersey, New York, and Rhode Island—some of the most densely populated areas of the United States.² This only exacerbated the misery created by hurricane force winds.

Damage caused by Hurricane Sandy included “damage to hundreds of thousands of homes, forced tens of thousands of survivors into shelters and caused billions of dollars in damage to vital infrastructure systems. . . .”³ Unemployment claims resulting from the temporary or permanent closure of businesses in New York and New Jersey, including thousands of small businesses, spiked dramatically in the four weeks following Sandy’s landfall.⁴ In New York and New Jersey alone, estimates to rebuild the infrastructure, homes, and businesses totaled nearly \$80 billion.⁵

In response to the devastating damage, the President declared a major disaster pursuant to § 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170(a) (Stafford Act).⁶ Included in the disaster declarations was the entire state of New Jersey and the lower 13 counties in New York (essentially the New York City metropolitan area), the District of Columbia, and portions of Massachusetts, Rhode Island, Connecticut, Delaware, Maryland, Virginia, New Hampshire, and West Virginia.⁷

¹ <http://www.nhc.noaa.gov/archive/2012/al18/al182012.update.10300002.shtml?>

² <http://www.weather.gov/okx/HurricaneSandy>.

³ <https://www.fema.gov/sandy-recovery-office>. In addition, 73 people lost their lives in the storm. *Id.*

⁴ ECONOMICS AND STATISTICS ADMINISTRATION, UNITED STATES DEP’T OF COMMERCE, ECONOMIC IMPACT OF HURRICANE SANDY 4,7 (2013).

⁵ *Id.* at 17.

⁶ The declaration of a major disaster simply means that state and local governments do not have the resources needed to respond in an adequate manner. 42 U.S.C. § 5170(a).

⁷ https://www.fema.gov/disasters/grid/year/2012?field=disaster_type_term_tid&tid=All. Each state requests the President to declare a major disaster under the Stafford Act. Thus, there were 11 separate disaster declarations issued by the President as a result of Hurricane Sandy.

Declaration of a major disaster under the Stafford Act allows the SBA to offer loans to homeowners and businesses. 15 U.S.C. § 636(b).⁸ There are two types of such loans: (1) physical disaster loans that enable reconstruction of residential and commercial property (of small businesses) for damages not covered by insurance; *id.* at § 636(b)(1); and (2) economic injury disaster loans for small businesses who suffered, not physical damage, but monetary harm as a result of diminution of commerce in the disaster area. *Id.* at § 636(b)(2). Time limits for filing applications are not established in statute or SBA regulations but are set out in a non-binding document.⁹ SBA, Standard Operating Procedure 50 30 6, at 18 (effective date May 13, 2011)¹⁰ (establishing deadline of 60 days after disaster for physical disaster loans and 9 months for economic injury disaster loans).

In 2008, Congress, as a result of the SBA's dismal response to Hurricane Katrina, imposed a variety of new disaster response preparedness obligations on the agency. These included: (1) improved coordination with the Federal Emergency Management Agency, 15 U.S.C. § 657i; (2) development of an information tracking system for disaster loans that enable SBA personnel to contact applicants for follow-up after application submission, *id.* at § 657j; (3) capacity for redundancy in disaster loan application processing, *id.* at § 657k; (4) creation of a comprehensive disaster response plan (with appropriate updates and revisions), *id.* at § 657l; (5) establishment of a plan for obtaining necessary office space to accommodate extra personnel needed for disaster response, *id.* at § 657m; (6) implementation of an immediate disaster assistance loan program in order to provide \$25,000 to residents and businesses located in the disaster area, *id.* at § 657i; (7) creation of a trained cadre of additional Office of Disaster Assistance employees, *id.* at § 636(b)(7); and (8) authorization of the SBA to hire private contractors for processing disaster applications in cases where the Administrator determines that a catastrophic incident has occurred. *Id.* at § 636(6)(A), (9)(B)(ii).

Despite the changes made by Congress, the United States Government Accountability Office (GAO) found that the SBA was ill-prepared to cope with the 15,745 disaster loan applications from small businesses—the majority of which were filed by entrepreneurs located in New Jersey and the New York City metropolitan area.¹¹ GAO found that SBA did not meet its own deadlines for processing disaster loans.¹² As the SBA missed its own processing deadlines, the backlog on decisions whether to issue a loan,

⁸ *E.g.*, SBA, New Jersey Disaster Number NJ-0900033, Notice, 77 Fed. Reg. 67,858 (Nov. 14, 2012); SBA, New York Disaster #NY-0900130, *id.* at 67,858 (Nov. 14, 2012); SBA, Rhode Island Disaster #RI-0900011, *id.* at 67,857 (Nov. 14, 2012).

⁹ The analysis of the non-binding nature of the standard operating procedures is beyond the scope of this Committee report. For a more detailed explication showing that the standard operating procedures are regulations issued in violation of SBA rules (and thus non-binding on the public), see Letter from the Hon. Steve Chabot, Chairman, Committee on Small Business to Ms. Mary Frias, Office of Capital Access, SBA at 39-0952 (Mar. 27, 2015) (on file with Committee).

¹⁰ The standard operating procedure can be found at <https://www.sba.gov/content/disaster-assistance-program-posted-11-07>.

¹¹ GAO, ADDITIONAL STEPS NEEDED TO HELP ENSURE MORE TIMELY DISASTER ASSISTANCE 11, 15 (2014) (GAO-0914-09760) [hereinafter "GAO Sandy Study"]. The GAO study was limited to disaster loan applications filed by small businesses and did not examine the processing of disaster loans from homeowners. An additional 73,000 loans were filed by homeowners seeking disaster assistance. *Id.* at 16 n. 23.

¹² *Id.* at 16.

according to GAO, “grew rapidly.”¹³ SBA averred that it was surprised by the volume and celerity with which disaster loan applications were submitted due to the use of electronic application system that the SBA instituted in 2008 and updated just months before Hurricane Sandy made landfall.¹⁴ Moreover, the SBA admitted that its systems would not be able to meet its own internal processing deadlines once more than 50,000 electronic applications were filed.¹⁵ In other words, the SBA was surprised that businesses and homeowners would use an application system that the agency lauded as one that would result in dramatic improvements in the processing of disaster loans.

The SBA exacerbated by the problem by handling all disaster loans on a first-in, first-out basis.¹⁶ Thus, business owners could find significant delays in the queues for obtaining needed assistance.

Despite a congressional mandate to ensure sufficient backups in computer systems, GAO found that the disaster credit management system suffered from “hardware crashes and periods of system latency (periods of slowness and freezing).”¹⁷ Naturally, this caused further delays in the processing of applications. It also contributed significantly to the inability of the SBA to receive applications in a timely manner especially given the short time frames for the filing of physical disaster loans.

Nor did the SBA have sufficiently trained personnel to review applications, despite Congressional directives to have such personnel. GAO found that additional staff were hired (rather than relying on a cadre of already trained personnel as directed by Congress) and then sent to an agency office not equipped to deal with disaster loans—its Sacramento loan processing center (which handles reviews of small businesses seeking guaranteed loans under other SBA financial access programs).¹⁸ These processing delays could have been alleviated had the SBA adopted the anodyne provided by Congress—declaring a catastrophic disaster and contracting with private enterprises to process the disaster loans.

Ultimately, Congress obligated the SBA to provide prompt disaster relief to homeowners and small businesses to enable rapid revitalization of communities affected by disaster areas. Despite significant congressional mandates and expansion of SBA authority, the agency, as it did after Hurricane Katrina, showed a flawed and inadequate response to the needs of those in the areas affected by Hurricane Sandy. The residents and small businesses in the path of Hurricane Sandy ultimately were harmed twice—once when the storm hit and the second time when, due to the incompetence of the SBA, they were unable to obtain or even file timely disaster loan applications.

H.R. 208, as amended, is a corrective to those who were suffered twice. It will hopefully ensure that the SBA is fully capable of responding to the next catastrophic disaster. More importantly, as Congress did with those who suffered during from Hurricanes Katrina, Rita, and Wilma, the legislation will allow those in the

¹³*Id.* at 18.

¹⁴<https://www.sba.gov/content/sba-simplifies-online-disaster-loan-application>.

¹⁵GAO Sandy Study, *supra* note 11, at 16, n. 23.

¹⁶*Id.* at 25.

¹⁷*Id.* at 26.

¹⁸*Id.* at 26–27.

areas affected by Sandy to apply for disaster assistance irrespective of the artificial and non-binding deadlines imposed by the SBA.

IV. HEARINGS

The Committee did not hold any hearings on H.R. 208. Given the devastating report issued by GAO, the Committee believed that following regular order of having a hearing on the legislation only would further delay the provision of needed assistance to those who have suffered too long from the effects of Hurricane Sandy.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on June 10, 2015, and ordered H.R. 208 at, as amended, be favorably reported to the House by a voice vote at 11:55 am.

Amendment Number One, filed by Ms. Velázquez of New York, made numerous changes to H.R. 208 that will be discussed in greater detail in the section-by-section analysis of this report. The amendment was agreed to by voice vote at 11:54 am.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto.

AMENDMENT TO H.R. 208

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Page 1, beginning on line 4, insert “and Disaster Loan Program Improvement” after “Relief”.

Page 3, strike line 1 and all that follows through page 4, line 4.

Page 2, insert after line 23 the following:

SEC. 3. REVISED DISASTER DEADLINE.

Section 7(d) of the Small Business Act (15 U.S.C. 636(d)) is amended by adding at the end the following:

“(8) DISASTER LOANS FOR SUPERSTORM SANDY.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

“(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

“(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

“(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.”.

Page 4, after line 4, insert the following:

SEC. 4. USE OF PHYSICAL DAMAGE DISASTER LOANS TO CONSTRUCT SAFE ROOMS.

Section 7(b)(1)(A) of the Small Business Act (15 U.S.C. 636(b)(1)(A)) is amended by striking “mitigating measures” and all that follows through “modifying structures” and inserting the following: “mitigating measures, including—

“(i) construction of retaining walls and sea walls;

“(ii) grading and contouring land; and

“(iii) relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters”.

SEC. 5. COLLATERAL REQUIREMENTS FOR SMALL BUSINESS CONCERNS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by adding at the end the following:

“(10) COLLATERAL REQUIREMENTS FOR SMALL BUSINESSES.—

In the case of a loan made pursuant to this subsection in an amount not greater than \$250,000, the Administrator may not require a borrower to pledge his or her primary residence as collateral if—

“(A) other collateral exists, including assets related to the operation of a business; and

“(B) such an option does not delay the Administrator’s processing of disaster applications for a disaster.”.

SEC. 6. REDUCING DELAYS ON CLOSING AND DISBURSEMENT OF LOANS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act, is further amended by adding at the end the following:

“(11) REDUCING CLOSING AND DISBURSEMENT DELAYS.—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.”.

SEC. 7. INCREASING TRANSPARENCY IN LOAN APPROVALS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act, is further amended by adding at the end the following:

“(12) INCREASING TRANSPARENCY IN LOAN APPROVALS.—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.”.

SEC. 8. SAFEGUARDING TAXPAYER'S INTERESTS.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act, is further amended by adding at the end the following:

“(13) ENSURING ACCOUNTABILITY IN LOAN APPROVALS.—The Administrator shall establish requirements for the approval of economic injury disaster loan assistance made available pursuant to paragraph (2), which shall include the review of applicant eligibility and shall require that all supporting documentation is submitted prior to loan approval. The Administrator shall require that personnel involved in the approval of such loans be trained on such procedures.”.

SEC. 9. DISASTER PERFORMANCE MEASURES.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act, is further amended by adding at the end the following:

“(14) REPORTING ON DISASTER PERFORMANCE MEASURES.—The Administrator shall report the average processing time for all other disaster loan applications, including disaggregated data on disaster loan applications that were declined by the Administration’s automated disaster processing system and applications in which the Administrator performed loss verification. For each disaster described in paragraph (2), the Administrator shall report such average processing times on its website and to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.”.

SEC. 10. DISASTER PLAN IMPROVEMENTS.

The Administrator of the Small Business Administration shall revise the comprehensive written disaster response plan required in section 40 of the Small Business Act (15 U.S.C. 657l), or any successor thereto, to incorporate the Administration’s response to a situation in which an extreme volume of applications are received during the period of time immediately after a disaster, which shall include a plan to ensure that sufficient human and technological resources are made available and a plan to prevent delays in loan processing.

SEC. 11. REPORT TO CONGRESS ON IMPLEMENTATION OF CERTAIN PROGRAMS.

(a) INITIAL REPORT.—The Administrator of the Small Business Administration shall report to Congress not later than 30 days after the date of enactment of this Act on the implementation and status of the private disaster loan program established in section 7(c) of the Small Business Act (15 U.S.C. 636(c)), the Immediate Disaster Assistance program established in section 42 of such Act (15 U.S.C. 657n), the expedited disaster assistance business loan program established in section 12085 of the Small Business Disaster Response and Loan Improvements Act of 2008 (15 U.S.C. 636j).

(b) REQUIRED CONSULTATION WITH DEPOSITORY INSTITUTIONS AND CREDIT UNIONS.—The Administrator shall require the Associate Administrator for the Office of Disaster Assistance to consult with depository institutions (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and credit unions regarding

their potential participation in any of the programs described in subsection (a).

(c) REPORT ON CONSULTATION.—Not later than 6 months after date of enactment of this Act, the Administrator shall report to Congress on the consultation required under subsection (b).

Amend the title so as to read: “A bill to improve the disaster assistance programs of the Small Business Administration.”.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 208 AS AMENDED

Section 1. Short title

This section designates the bill as the “Superstorm Sandy Relief and Disaster Loan Program Improvement Act of 2015.”

Section 2. Findings

Section 2 sets forth the findings that necessitate the legislation which is further explicated in the section of this report addressing the background and need for the legislation. The findings reveal that the SBA was overwhelmed by the number of applications and did not have adequate systems, training, or personnel in place to ensure that homeowners and small businesses would be able to submit loan applications, much less get them processed in a timely manner.

Section 3. Revised disaster deadline

The amendment adopted by the Committee modifies section 3 of H.R. 208 by establishing that the SBA shall be reopen the application process for disaster loans to those who were located in an area for which the President, pursuant to § 401 of the Stafford Act, declared a major disaster. Permissible loans in this context would include physical disaster loans and economic injury disaster loans. To the extent that the SBA’s notices on the Hurricane Sandy disaster included authorizing economic injury disaster loans for small businesses outside of the specific areas included in the Presidential disaster declarations, the Committee expects that such loans should still be available under § 3 of H.R. 208. It would not include immediate disaster assistance authorized by § 37 of the Small Business Act, 15 U.S.C. § 657(i).

The Committee believes that simply reopening the application deadline under § 7(b) of the Small Business Act is the most appropriate manner to alleviate the problems faced by those who sought disaster assistance from the SBA as a result of Hurricane Sandy. The only reason that Congress needs to act in this circumstance is that the SBA, rather than operating by open and transparent rule-making, imposed an artificial deadline on disaster applicants by way of a standard operating procedure. The reopening of the deadline should not modify any of the other requirements for obtaining a disaster loan under § 7(b) of the Small Business Act *except as modified by H.R. 208, as amended*. Although § 7(b) applies with full force, the time deadline of not less than one year specified in H.R. 208 overrides any SBA interpretation to the contrary. Similarly, although collateral requirements still would apply, their application is modified by H.R. 208, as amended, and those new collateral standards would apply to new loan applications from those who resided or owned businesses in areas subject to the Hurricane Sandy

disaster declarations. Similarly, new standards for ability to repay, as directed elsewhere in H.R. 208, would apply. This is not a comprehensive list, but demonstrates the Committee's understanding that § 7(b) applies unless this legislation modifies the procedures and standards for issuing a loan pursuant to § 7(b).

While the Committee is taking action due to the opacity of the agency's "regulatory requirements," the approach in the amendment adopted by the Committee specifically avoids any mandate the Administrator implement the section through notice and comment rulemaking in compliance with the agency's own rules. That would simply delay the ability of those adversely affected from obtaining assistance under the same standards that all other homeowners and small businesses obtain disaster loans from the SBA.

Section 4. Use of physical damage disaster loans to construct safe rooms

The SBA is authorized to issue physical disaster loans for 120 percent of the value of property destroyed but not covered by insurance. The additional 20 percent may be used to modify structures to reduce damage from a subsequent disaster. 15 U.S.C. § 636(b)(1)(A). The SBA interprets this provision to prevent the use of additional proceeds for the construction of safe rooms even though the provision specifically authorizes that proceeds may be used for "mitigating measures, including but not limited to . . . modifying structures. . . ." *Id.* Although the SBA's interpretation of the existing language in the Small Business Act is patently incorrect (since a safe room is a mitigating measure and the statutory language sets forth examples not a comprehensive list), the agency, after discussion with the Committee remains adamant in its interpretation of the statute.

Therefore, the amendment adopted by the Committee adds a new § 4 (based on legislation introduced by Mr. Cole of Oklahoma) to H.R. 208 that rejects the SBA interpretation by specifically authorizing that the additional proceeds could be used to construct safe rooms as a mitigating measure. Given the SBA's penchant for crabbed interpretations of its legislative authority, § 4 also denotes that proceeds need not be used solely for something designated a safe room but also could be used for other types of storm shelters that protect occupants from tornadoes or other types of natural disasters including, but not limited to, hurricanes, floods and wildfires.

Section 5. Collateral requirements for small business concerns

Disaster loans are not grants, but rather loans. Congress, in authorizing loans, fully expects that they be repaid (and such repayments significantly reduce the costs of maintaining the revolving disaster loan account). The primary mechanism to ensure repayment is the provision of collateral that can be seized should the loan not be repaid. If a small business is significantly damaged, the fallback collateral is usually the owner's personal residence.

The amendment adopted by the Committee adds a new paragraph (10) to § 7(b) of the Small Business Act. The new paragraph prohibits the Administrator from requiring that personal residence be used as collateral for loans of less than \$250,000 if the applicant has sufficient other collateral that covers the value of the loan. The

Committee recognizes that the assessment of alternative collateral could delay the processing of loans and expects that the SBA, in implementing this provision, will inform the public at the time of application about delays that might result from the agency's determination of the value of alternative collateral.

Section 6. Reducing delays on closing and disbursement of loans

Disaster loans require a significant amount of material from the applicants. The SBA permits homeowners and businesses to file applications without all necessary documentation with the expectation that such documentation may be submitted at a later date. In many cases, this makes abundant sense as the applicant may not have access to the material required by the SBA due to the disaster, including access to buildings where such information is stored. However, the SBA does not inform the applicants that later provision of such needed documentation may delay disbursements even though some applicants could have submitted all of the information at the time they applied for disaster assistance. Section 6 of the amendment adopted by the Committee would add a new requirement that the SBA inform applicants that they may (and if such information is available should) file all necessary documentation at the time of application or the processing and disbursement of the loan may be delayed.

Section 7. Increasing transparency in loan approvals

GAO found that many of the new individuals assigned to reviewing applications from those affected by Hurricane Sandy were ill-equipped to properly analyze the ability of an applicant to repay the loan. Furthermore, the SBA's standard operating procedures do not provide clear or transparent standards by which the ability to repay is measured. This means that two similarly situated applicants may be treated differently—an outcome that has been prohibited in government decisionmaking since the enactment of the Administrative Procedure Act in 1946. *See Morton v. Ruiz*, 415 U.S. 199, 232 (1974).

This section of the amendment by the Committee would address this situation by adding a new provision to § 7(b) of the Small Business Act that requires the Administrator to establish and implement clear written policies and procedures for analyzing the ability to repay. The Committee rejected the alternative of requiring such standards be promulgated after notice and comment rulemaking only because it would further delay the approval and disbursement of loans to recipients of loans affected by Hurricane Sandy. Of course, once the deadline established by the SBA pursuant to § 3 of H.R. 208 lapses, the Committee would urge the agency to publish the standards for codification in the Code of Federal Regulations. This will ensure that future applicants, SBA personnel, and any private contractors for catastrophic disasters will apply and utilize the same standards on the ability of applicants to repay.

Section 8. Safeguarding taxpayers' interests

As already noted, the standards utilized by the SBA in making disaster loan decisions are anything but clear. This problem also extends to the standards used to make determinations on whether

to issue an economic injury disaster loan, including whether the applicant was eligible, i.e., a small business.

The amendment adopted by the Committee adds a new § 8 to H.R. 208 to address this problem. It requires that economic injury disaster loan applicants file all necessary paperwork prior to approval thereby ensuring that the agency will have all necessary information to determine eligibility, including whether the business is small or suffered damages as a result of the natural disaster. Given that GAO found new SBA personnel were not properly trained, the amendment adopted by the Committee also mandates that the SBA train personnel on these new procedures for determining eligibility of economic injury disaster loans. Finally, the Committee expects that these new procedures will be instituted to address the new applications filed pursuant to § 3 of H.R. 208 and the Committee does not expect that the implementation of the procedures in § 8 of the amended bill should slow the processing of disaster assistance to those affected by Hurricane Sandy.

Section 9. Disaster performance measures

The SBA currently reports on its disaster loan processing times. However, that information is not sufficiently disaggregated to help either applicants or Congress understand the status of assistance provided to those homeowners and small businesses after a disaster occurs. Section 9 of the amendment adopted by the Committee rectifies this problem by forcing the SBA to report sufficiently disaggregated data so that the agency's managers, applicants, and Congress obtain complete information on the processing and disbursement of disaster loans.

Section 10. Disaster plan improvements

One significant finding made by the GAO was that the SBA was unprepared for the volume of applications it received after Hurricane Sandy. Furthermore, the GAO found that the SBA's disaster response plan has not been modified to address the problem of unanticipated application volume after a disaster. GAO Sandy Study, *supra* note 11, at 15. The Committee finds that highly problematic (although given the fact that the SBA's SOP on disaster loans was written in 2011 not entirely surprising). Therefore, § 10 of the amendment adopted by the Committee requires that the SBA update its disaster response plan to specify how the agency will address a disaster where it can be expected to receive a large volume of applications in both written form and electronically. The Committee would expect that it may include additional standards for the retention of private processors of disaster loans for catastrophic disasters.

Section 11. Report to Congress on implementation of certain programs

GAO found that the SBA had not implemented a number of changes in the disaster loan program in 2008 (again a result unsurprising to the Committee). *Id.* at 39. Therefore, the amendment adopted by the Committee includes a new § 11 to H.R. 208 that requires the Administrator to report on the progress made in promulgating rules for those loan programs. That progress also entails consultation with financial institutions, including credit

unions, about their ability, capacity and interest to offer the loan products specified in § 11(a). The Committee views these discussions as vital, since the programs are designed to rely on private institutions making loans that the SBA guarantees.

Given the fact that the agency has not, after seven years, bothered to promulgate rules for two out of the three programs, the Committee believes that the SBA should conduct such rulemaking forthwith so these programs will be available in the SBA's disaster response arsenal. Once established, the Committee also expects the agency to modify its disaster response plan and update its standard operating procedures.

VIII. CONGRESSIONAL BUDGET JUSTIFICATION

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

IX. UNFUNDED MANDATES

H.R. 208 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104-4, and would impose no costs on state, local or tribal governments.

X. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 208 will not establish any new budget or entitlement authority or create any tax expenditures.

The legislation, by reopening the disaster loan application period (a deadline established by what is effectively an agency guidance document), will utilize the funds in the disaster loan account that are available until expended. The Committee believes that the disaster loan account currently has sufficient funds to address the remaining Hurricane Sandy applicants that would apply pursuant to § 3 of H.R. 208 without diminishing the ability of the agency to respond to new disasters.

XI. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 208 are incorporated into the descriptive portions of this report.

XII. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cl. 3 of the Constitution of the United States.

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 208 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104–1.

XIV. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 208 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 208 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XVI. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c) of the rule XIII of the Rules of the House, no provision of H.R. 208 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the United States Government Accountability Office pursuant to § 21 of Pub. L. No. 111–139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

XVII. DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House, H.R. 208 does not direct any rulemaking.

XVIII. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 208 amends the Small Business Act to allow new applications for disaster loans to businesses, homeowners, and renters affected by Hurricane Sandy. H.R. 208 also makes changes in SBA management to ensure that the SBA has the ability to respond in a comprehensive manner to new disasters.

XIX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 7. (a) LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such

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

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

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

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or

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

(B) REDUCED PARTICIPATION UPON REQUEST.—

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

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

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

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

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

(iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term “Preferred Lenders Program” means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

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

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

(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

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

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed \$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000 may be used for working capital, supplies, or financings under section 7(a)(14) for export purposes; and

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

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of in-

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

(B) PAYMENT OF ACCRUED INTEREST.—

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

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

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

(C) PREPAYMENT CHARGES.—

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

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

(II) the prepayment is voluntary;

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

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

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

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

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

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

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

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

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

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

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

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

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

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

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

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section

2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

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

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

(13) The Administration may provide financing under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

(14) EXPORT WORKING CAPITAL PROGRAM.—

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

(B) TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii) FEES.—

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

(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

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

(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which,

when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

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

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

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

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

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

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

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

(16) INTERNATIONAL TRADE.—

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

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

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

(iii) by providing working capital.

(B) SECURITY.—

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

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

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

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

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.

(F) LIST OF EXPORT FINANCE LENDERS.—

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

(I) this paragraph;

(II) paragraph (14); or

(III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall—

(I) post the list published under clause (i) on the website of the Administration; and

(II) make the list published under clause (i) available, upon request, at each district office of the Administration.

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

(18) GUARANTEE FEES.—

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

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

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

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

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

(C) AUTHORITY TO LIQUIDATE LOANS.—

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

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

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

- (i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;
 - (ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;
 - (iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and
 - (iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.
- (B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.
- (ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.
 - (iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.
 - (iv) Financings made pursuant to this paragraph shall be subject to the following limitations:
 - (I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.
 - (II) No direct financing may be made unless it is shown that a participation is unavailable.
- (C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—
- (i) that is subordinated by its terms to all other borrowings of the issuer;
 - (ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;
 - (iii) the term of which is not more than twenty-five years; and
 - (iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.
- (21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—
- (i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—
 - (I) the closure (or substantial reduction) of a Department of Defense installation; or

- (II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or
- (ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.
- (B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).
- (C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.
- (D) For purposes of this paragraph a qualified individual is—
- (i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;
- (ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or
- (iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.
- (E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—
- (i) have the greatest potential for—
- (I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or
- (II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and
- (ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.
- (22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.
- (23) YEARLY FEE.—
- (A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation

share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

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

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

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

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.

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

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

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

(B) PILOT PROGRAM DEFINED.—In this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing loans under this Act.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20

percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

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

(A) shall be required by the Administration in connection with any such loan for more than \$250,000; or

(B) may be required by the Administration or the lender in connection with any such loan for \$250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

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

(31) EXPRESS LOANS.—

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

(i) The term “express lender” means any lender authorized by the Administration to participate in the Express Loan Program.

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

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

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

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to

paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F) EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “biomass”—

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

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

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

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

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

(bb) does not include—

(AA) paper that is commonly recycled;

or

(BB) unsegregated solid waste;

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

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

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

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

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

(I) purchasing a renewable energy system; or

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

(32) LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

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

(I) made under this subsection; and

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

(iii) the term “pilot program” means the pilot program established under subparagraph (B)

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

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

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

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

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

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

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

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

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

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

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

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

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

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

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

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

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

(V) recommendations for improving the pilot program.

(33) INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

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

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

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

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

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

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

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

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

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

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

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

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

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

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

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

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

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

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

(IV) recommendations for improving the pilot program.

(34) EXPORT EXPRESS PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

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

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

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

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

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

(V) performing a service contract from buyers located outside the United States;

(VI) obtaining transaction-specific financing associated with completing export orders;

(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term “express loan” means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

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

(C) LEVEL OF PARTICIPATION.—

(i) MAXIMUM AMOUNT.—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

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

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

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

(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters: *Provided*, That such damage or destruction is not compensated for by insurance or otherwise: *And provided further*, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise) if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking [mitigating measures, including, but not limited to, construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures] *mitigating measures, including—*

(i) *construction of retaining walls and sea walls;*

(ii) *grading and contouring land; and*

(iii) *relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters;*

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless

the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2) to make sure loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern, private nonprofit organization, or small agricultural cooperative located in an area affected by a disaster, (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration determines that the concern, the organization, or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph; or

(C) a disaster, as determined by the Administrator of the Small Business Administration; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may then

make such loans as would have been available under this paragraph if a disaster declaration had been issued.
Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

(3)(A) In this paragraph—

(i) the term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

(ii) the term “period of military conflict” has the meaning given the term in subsection (n)(1); and

(iii) the term “substantial economic injury” means an economic harm to a business concern that results in the inability of the business concern—

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 1 year after the date on which such essential employee is discharged or released from active duty. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed \$1,500,000, unless such applicant constitutes, or have become due to changed economic circumstances, a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the \$1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

(G)(i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than \$50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

(I) the 1-year period beginning on the date of the initial disbursement of the loan; and

(II) the period during which the relevant essential employee is on active duty.

(H) The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

(4) COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this Act correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes—

(i) the deadline for submitting applications for assistance under this Act relating to that major disaster;

(ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and

(iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all rel-

evant information needed by disaster loan applicants, including—

- (A) the date of such declaration;
- (B) cities and towns within the area of such declaration;
- (C) loan application deadlines related to such disaster;
- (D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);
- (E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;
- (F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and
- (G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(6) AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.—

(A) DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) LOAN LOSS VERIFICATION SERVICES.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7) DISASTER ASSISTANCE EMPLOYEES.—

(A) IN GENERAL.—In carrying out this section, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

- (i) in the Office of the Disaster Assistance is not fewer than 800; and
- (ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) REPORT.—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the

Committee on Appropriations and Committee on Small Business of the House of Representatives, a report—

- (i) detailing staffing levels on that date;
- (ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and
- (iii) containing such additional information, as determined appropriate by the Administrator.

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed \$2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9) DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

- (i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;
- (ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and
- (iii) be of such size and scope that—

(I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or

(II) a significant number of business concerns outside the disaster area have suffered disaster-related substantial economic injury as a result of the incident.

(C) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

- (i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in coopera-

tion with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) LOAN TERMS.—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) DEFINITIONS.—In this paragraph—

(i) the term “disaster area” means the area for which the applicable major disaster was declared;

(ii) the term “disaster-related substantial economic injury” means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term “eligible small business concern” means a small business concern—

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II)(aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

(10) *COLLATERAL REQUIREMENTS FOR SMALL BUSINESSES.*—*In the case of a loan made pursuant to this subsection in an amount not greater than \$250,000, the Administrator may not require a borrower to pledge his or her primary residence as collateral if—*

(A) *other collateral exists, including assets related to the operation of a business; and*

(B) *such an option does not delay the Administrator's processing of disaster applications for a disaster.*

(11) *REDUCING CLOSING AND DISBURSEMENT DELAYS.*—*The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.*

(12) *INCREASING TRANSPARENCY IN LOAN APPROVALS.*—*The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.*

(13) *ENSURING ACCOUNTABILITY IN LOAN APPROVALS.*—*The Administrator shall establish requirements for the approval of economic injury disaster loan assistance made available pursuant to paragraph (2), which shall include the review of applicant eligibility and shall require that all supporting documentation is submitted prior to loan approval. The Administrator shall require that personnel involved in the approval of such loans be trained on such procedures.*

(14) *REPORTING ON DISASTER PERFORMANCE MEASURES.*—*The Administrator shall report the average processing time for all other disaster loan applications, including disaggregated data on disaster loan applications that were declined by the Administration's automated disaster processing system and applications in which the Administrator performed loss verification. For each disaster described in paragraph (2), the Administrator shall report such average processing times on its website and to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.*

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or

equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (d) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b), shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than \$2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. No later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committee of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this para-

graph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1) and (2) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such project is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed \$2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed \$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph, the Administrator shall—

(i) make sure change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

(E) A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act to a disaster loan under paragraph (1) (2) of this subsection.

(c) PRIVATE DISASTER LOANS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “disaster area” means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

(B) the term “eligible individual” means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

(C) the term “eligible small business concern” means a business concern that is—

(i) a small business concern, as defined under this Act; or

(ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958;

(D) the term “preferred lender” means a lender participating in the Preferred Lender Program;

(E) the term “Preferred Lender Program” has the meaning given that term in subsection (a)(2)(C)(ii); and

(F) the term “qualified private lender” means any privately-owned bank or other lending institution that—

(i) is not a preferred lender; and

(ii) the Administrator determines meets the criteria established under paragraph (10).

(2) PROGRAM REQUIRED.—The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.

(3) USE OF LOANS.—A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).

(4) ONLINE APPLICATIONS.—

- (A) ESTABLISHMENT.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.
- (B) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.
- (C) CONSULTATION.—In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.
- (5) MAXIMUM AMOUNTS.—
- (A) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this subsection.
- (B) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this subsection shall be \$2,000,000.
- (6) TERMS AND CONDITIONS.—A loan guaranteed under this subsection shall be made under the same terms and conditions as a loan under subsection (b).
- (7) LENDERS.—
- (A) IN GENERAL.—A loan guaranteed under this subsection made to—
- (i) a qualified individual may be made by a preferred lender; and
 - (ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.
- (B) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:
- (i) Exclude the preferred lender from participating in the program under this subsection.
 - (ii) Exclude the preferred lender from participating in the Preferred Lender Program for a period of not more than 5 years.
- (8) FEES.—
- (A) IN GENERAL.—The Administrator may not collect a guarantee fee under this subsection.
- (B) ORIGINATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.
- (9) DOCUMENTATION.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use

its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) IMPLEMENTATION REGULATIONS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(11) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND CONDITIONS.—Funds appropriated to the Administration to carry out this subsection, may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

(12) PURCHASE OF LOANS.—The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such time (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior the effective date of this Act, on the Administra-

tion's share of loans made pursuant to paragraph (1) of subsection (b)—

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first \$55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from one-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the

Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner, able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under

this subparagraph shall be limited to a maximum term of 7 years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than \$100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than \$20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further*, That the Administration shall not require collateral for loans of \$14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster) which are made under paragraph (1) of subsection (b). Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term "an area affected by a disaster" includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

(8) *DISASTER LOANS FOR SUPERSTORM SANDY.*—

(A) *IN GENERAL.*—*Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—*

(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.

(e) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.

(f) ADDITIONAL REQUIREMENTS FOR 7(b) LOANS.—

(1) INCREASED DEFERMENT AUTHORIZED.—

(A) IN GENERAL.—In making loans under subsection (b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) PERIOD.—The period of a deferment under subparagraph (A) may not exceed 4 years.

(g) NET EARNINGS CLAUSES PROHIBITED FOR 7(b) LOANS.—In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(e) [RESERVED].

(f) [RESERVED].

(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed \$350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this sub-

section shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i)(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however*, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3142); and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection when the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j)(1) the Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designated to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), (7)(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperative; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in area of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under section 7(i), 7(j), and 8(a), of this Act.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

(10) There is established with the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority

Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financing counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter

referred to as the plan”) as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant’s prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant’s strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 8(a).

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant’s plan during the first year of the transitional stage of Program participation).

(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be

considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a).

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

(F) For the purposes of section and 8(a), the terms "terminated" or "termination" means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation in term. An action for termination shall be based upon good cause, including—

(i) the failure by such concern to maintain its eligibility for Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or

terminations for default with respect to contracts awarded under the authority of section 8(a);

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

(H) For the purposes of sections 7(j) and 8(a) the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii);

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard

to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988", shall be eligible for award of a contract pursuant to section 8(a).

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such

regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period.

The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

- (i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;
- (ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and
- (iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

(A) Contract support pursuant to section 8(a).

(B) Financial assistance pursuant to section 7(a)(20).

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled "An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000.

This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of the Act entitled “An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works”, approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant’s employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term “training provider” shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and

gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k) In carrying out its functions under subsections 7(i), 7(j), and 8(a) of this Act, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)); and

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) authorized by section 5 of such Act (5 U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

(1) DEFINITIONS.—In this subsection—

(A) the term “eligible intermediary”—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

(I) a private, nonprofit community development corporation;

(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

(B) the term “Program” means the small business intermediary lending pilot program established under paragraph (2).

(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) PURPOSES.—The purposes of the Program are—

(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

(i) the type of small business concerns to be assisted;

(ii) the size and range of loans to be made;

(iii) the interest rate and terms of loans to be made;

(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

(vi) the qualifications of the applicant to carry out this subsection.

(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

- (i) to not more than 20 eligible intermediaries; and
- (ii) in a total amount of not more than \$20,000,000.

(5) LOANS TO SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.

(m) MICROLOAN PROGRAM.—

(1)(A) PURPOSES.—The purposes of the Microloan Program are—

- (i) to assist women, low-income, veteran (within the meaning of such term under section 3(q)), and minority entrepreneurs and business owners and other individuals possessing the capability to operate successful business concerns;
- (ii) to assist small business concerns in those areas suffering from a lack of credit due to economic downturns;
- (iii) to establish a microloan program to be administered by the Small Business Administration—

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, par-

ticularly loans in amounts averaging not more than \$10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

(I) establishing small businesses; and

(II) eliminating their dependence on that assistance.

(B) ESTABLISHMENT.—There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed \$50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

(A) meets the definition in paragraph (10); and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) LOANS TO INTERMEDIARIES.—

(A) INTERMEDIARY APPLICATIONS.—(i) IN GENERAL.—As part of its application for a loan, each intermediary shall submit a description to the Administration of—

(I) the type of businesses to be assisted;

(II) the size and range of loans to be made;

(III) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

(ii) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than \$10,000.

(B) INTERMEDIARY CONTRIBUTION.—As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(C) LOAN LIMITS.—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed \$750,000 in the first year of such intermediary's participation in the program, and \$5,000,000 in the remaining years of the intermediary's participation in the program.

(D)(i) IN GENERAL.—The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all ob-

ligations owed to the Administration under this subsection are repaid.

(ii) LEVEL OF LOAN LOSS RESERVE FUND.—

(I) IN GENERAL.—Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(II) REVIEW OF LOAN LOSS RESERVE.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(III) REDUCTION OF LOAN LOSS RESERVE.—Subject to the requirements of clause IV, the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

(IV) REQUIREMENTS.—The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

(E) UNAVAILABILITY OF COMPARABLE CREDIT.—An intermediary may make a loan under this subsection of more than \$20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than \$50,000, or have outstanding or committed to any 1 borrower more than \$50,000.

(F) LOAN DURATION; INTEREST RATES.—

(i) LOAN DURATION.—Loans made by the Administration under this subsection shall be for a term of 10 years.

(ii) APPLICABLE INTEREST RATES.—Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the

rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than \$7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iv) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

(v) RATE BASIS.—The applicable rate of interest under this paragraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vii) COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

(G) DELAYED PAYMENTS.—The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(H) FEES; COLLATERAL.—Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subpara-

graph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

(B) CONTRIBUTION.—As a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(i) IN GENERAL.—In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

(II) the intermediary has a portfolio of loans made under this subsection that averages not more than \$10,000 during the period of the intermediary's participation in the program.

(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

(iii) CONTRIBUTION EXCEPTION.—The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

(D) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.—The eligibility for a grant described in subparagraph (A) or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(i) IN GENERAL.—Each intermediary may expend an amount not to exceed 25 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than 25 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F) SUPPLEMENTAL GRANT.—

(i) IN GENERAL.—The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries

and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

(ii) ELIGIBLE RECIPIENTS; GRANT AMOUNTS.—In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed \$200,000 per year.

(iii) USE OF GRANT AMOUNTS.—Grants under this subparagraph—

(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

(II) may be used by a grantee—

(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) MEMORANDUM OF UNDERSTANDING.—Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(5) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administration may make not more

than 55 grants annually, each in amounts not to exceed \$200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

(A) IN GENERAL.—An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) PORTFOLIO REQUIREMENT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than \$15,000.

(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) REVIEW RESTRICTION.—The Administration shall not review individual microloans made by intermediaries prior to approval.

(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) PROGRAM FUNDING FOR MICROLOANS.—

(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) ALLOCATION.—

(i) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall

make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) \$800,000; or

(bb) $\frac{1}{55}$ of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

(ii) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(9) GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.—

(A) IN GENERAL.—The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of micro-lending practices necessary to operate successful microloan programs.

(B) ASSISTANCE AMOUNT.—The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing, to achieve the purpose set forth in subparagraph (A).

(C) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and

welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

(10) REPORT TO CONGRESS.—On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3½ years of the microloan program and the following:

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

(G) any recommendations for legislative changes that would improve program operations.

(11) DEFINITIONS.—For purposes of this subsection—

(A) the term “intermediary” means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

(I) no application is received from an eligible nonprofit organization; or

(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

(v) an agency of or nonprofit entity established by a

Native American Tribal Government,

that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;

(B) the term “microloan” means a short-term, fixed rate loan of not more than \$50,000, made by an intermediary to a startup, newly established, or growing small business concern;

(C) the term “rural area” means any political subdivision or unincorporated area—

(i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the

Small Business Administration has determined such political subdivision or area to be rural; and

(D) the term “economically distressed area”, as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.

(12) DEFERRED PARTICIPATION LOAN PILOT.—In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or non-profit entity or by alliances of such entities, subject to the following conditions:

(A) NUMBER OF LOANS.—In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(B) TERM OF LOANS.—The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

(C) INTEREST RATE.—The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13) EVALUATION OF WELFARE-TO-WORK MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).

(n) REPAYMENT DEFERRED FOR ACTIVE DUTY RESERVISTS.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE RESERVIST.—The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(B) ESSENTIAL EMPLOYEE.—The term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

(C) PERIOD OF MILITARY CONFLICT.—The term “period of military conflict” means—

- (i) a period of war declared by the Congress;
- (ii) a period of national emergency declared by the Congress or by the President; or
- (iii) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code.

(D) QUALIFIED BORROWER.—The term “qualified borrower” means—

(i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) before being ordered to active duty; or

(ii) a small business concern that received a direct loan under subsection (a) or (b) before an eligible reservist, who is an essential employee, was ordered to active duty.

(2) DEFERRAL OF DIRECT LOANS.—

(A) IN GENERAL.—The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b), if such loan was incurred by a qualified borrower.

(B) PERIOD OF DEFERRAL.—The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

(C) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

(3) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The Administration shall—

(A) encourage intermediaries participating in the program under subsection (m) to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3); and

(B) not later than 30 days after the date of the enactment of this subsection, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) and financings under section 504 of the Small Business Investment Act of 1958 that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

* * * * *

XX. ADDITIONAL VIEWS

BACKGROUND

The SBA's Disaster Assistance program was implemented for the purpose of providing timely financial assistance in the form of low interest loans and working capital for businesses and homeowners devastated by a disaster.

The problems and deficiencies in the SBA's Disaster Loan program were well exposed following Superstorm Sandy. The agency's shortcomings were highlighted in three separate reports by Small Business Committee Democrats, the SBA's Office of Inspector General (OIG), and the GAO.

In 2013, the Small Business Committee Democrats released a report drawing attention to the significant backlog of loan applications and long delays in SBA's loan processing center following Superstorm Sandy. The report found that homeowners waited on average 30 days for loan approval while small businesses experienced delays of nearly 46 days, a three-fold increase over previous processing times following other hurricanes. This was after SBA was heavily criticized for its slow response following Hurricane Katrina and its commitment to improve processing time to less than 21 days.

In 2014, the SBA Office of Inspector General (OIG) conducted a similar audit of SBA's loan processing times following the committee's report on Superstorm Sandy delays. The OIG found that the SBA generally was unable to attain its disaster loan process time performance goals unless it included applications that were automatically declined or quickly rejected before loss verification. These types of applications typically took two or three days to process, whereas full processing took significantly longer. The SBA's reported average processing time—as published in its Congressional Budget Justification and Annual Performance Reports—included the processing time for these two types of declinations. In other words, SBA manipulated data to report shorter loan processing times and likely avoid criticism for delays in disaster loan processing.

Because of the methodology SBA used to compute processing time for disaster loan applications, the reported performance did not accurately communicate to eligible applicants and oversight officials how long it was likely to take for most applicants to receive a disaster loan. The OIG also found that processing time performance standards were generally not attainable beyond certain application volume levels.

GAO released its report on Hurricane Sandy in October 2014. It found that following Hurricane Sandy, the SBA did not meet its timeliness goal for processing business loan applications. From application receipt to loan decision, SBA took an average of 45 days

to process physical business disaster loans and 38 days for economic injury loans, both of which exceed SBA's 21-day application processing goal. SBA said it was challenged by an unexpectedly high volume of loan applications that it received early in its response to the disaster, in addition to other challenges, such as technological issues. SBA estimated that application submissions would peak about 7 to 9 weeks after Hurricane Sandy, but it received a larger volume of applications than were expected prior to that period. While SBA officials told GAO that the agency has taken steps to respond to some challenges, it has not revised its disaster planning documents—including the Disaster Preparedness and Recovery Plan—to reflect the early volume of application submissions received after Hurricane Sandy and the potential impact a similar experience could have on staffing, resources, and forecasting models for future disasters. Federal internal control standards state that management should identify risks and take action to manage them. Without taking its experience with early application submissions after Hurricane Sandy into account in its disaster planning documents and analyzing the potential risk early submissions may pose for timely disaster response, SBA may be unprepared for a large volume of applications to be submitted quickly following future disasters, which may result in delays in loan funds for disaster victims.

GAO also found that the SBA has not implemented the guaranteed disaster loan programs Congress mandated in 2008, including the Immediate Disaster Assistance Program (IDAP)—a bridge loan program through private sector lenders providing disaster victims with up to \$25,000 with a 36-hour application approval period. SBA has not conducted a formal documented evaluation of lenders' feedback that would establish the basis for proposed changes to requirements for Congress to consider. Without an appropriately documented evaluation of its outreach to lenders, SBA may not have complete and reliable information on which to base its reporting to Congress about its challenges with implementing the programs required by the act.

LEGISLATION

Ranking Member Velázquez introduced H.R. 208, the Superstorm Sandy Relief Act on January 8, 2015. The bill as introduced would allow Sandy victims to apply for disaster loans for an additional year. During consideration of the legislation on June 10, 2015, an amendment was adopted that added several new sections.

The legislation includes congressional findings related to Superstorm Sandy. The findings demonstrate that those affected by the disaster were unable to receive assistance in a timely manner, largely due to SBA's own failures in responding to the storm. This is supported by the reports issued by the GAO, SBA's OIG, and committee Democrats.

The legislation attempts to rectify this problem by permitting small businesses, homeowners, and renters that were located within the areas affected by Hurricane Sandy to apply for an SBA disaster loan for a period of not less than one year. As noted above, this is in response to the delays and processing difficulties post-Sandy that were identified by the committee, GAO, and the SBA

IG. Allowing these victims to reapply is appropriate and will provide further aid to areas that have struggled to rebuild post-Sandy. It is expected that SBA implement this new authority as soon as possible and ensure that as many businesses, homeowners, and renters that need and qualify for assistance receive it quickly and without undue administrative burden.

In terms of cost, the SBA already has access to substantial funds, most of which were appropriated for Hurricane Sandy but not used. Therefore, it is expected that no new funds will be needed to implement this section. To this point, as of May 31st, there is \$717.5 million in funds remaining for disaster loans, which at the current credit subsidy rate would provide \$5.8 billion in disaster loans for the remainder of the year. Based on historical disaster spend rates, the SBA uses an average of \$1.1 billion per year in loan volume. Given this, the agency has access to more than five years of disaster program funding based on these historical spend rates.

As noted above, several other provisions were added during the June 10th markup. This includes changes to the collateral policy for disaster loans. For business disaster loans up to \$250,000, the SBA is prevented from requiring a borrower to pledge his/her primary residence as collateral if other collateral exists, including assets related to the operation of a business, and if such an option does not delay the SBA's processing of disaster applications for a given disaster. This policy change is responsive to one of the most frequently cited reasons that small businesses fail to apply for SBA disaster loans—the requirement that a borrower pledge his/her primary residence as collateral. Notably, this provision will not result in a situation where the government becomes uncollateralized. Rather, it will just permit borrowers to pledge business assets, if available, in lieu of their primary residence.

The bill also includes a provision to require the SBA to provide a clear and concise notification on all loan application materials and relevant websites advising applicants that they have the option to submit all documentation necessary for loan closing at the time of application and that failure to submit all documentation could delay loan closing and disbursement. This is in response to the SBA OIG's finding that closing and disbursement delays could be reduced if borrowers were notified that required documentation should be submitted earlier in the application process.

SBA is also required to establish and implement clear, written policies and procedures for analyzing the repayment ability of disaster business loan applicants, including business loan principals and guarantors. These steps are necessary to address the SBA's OIG finding that loan officers had no clear standards to approve or deny loans in the aftermath of Hurricane Sandy.

H.R. 208, as amended, includes a provision directing the SBA to develop requirements for Economic Injury Disaster Loan (EIDL) approval, which include reviewing applicant eligibility and ensuring that all required supporting documentation is included in the loan file prior to approving the loan. All relevant disaster program personnel are required to be trained on such procedures. This is in response to SBA OIG findings that the agency improperly approved EIDL loans to ineligible entities, resulting in losses to the taxpayers.

The SBA is required to report the processing times for automatically declined applications, pre-loss verification declined applications, and applications that require further processing. After each disaster, the SBA is required to report on its website and to Congress its average processing times across all identified categories. This addresses the numerous investigations that showed the SBA was improperly reporting processing times, solely to its advantage.

The legislation also directs the agency to revise its disaster plan, which committee Democrats established in law in 2007, to anticipate the potential impact of early application submissions on staffing and resources for future disasters, as well as the risk this impact may pose for SBA's timely disaster response. SBA is also required to develop plans to mitigate sharp increases in disaster loan applications. As the GAO found, the agency was unable to respond effectively to the spike in applications that were received in the aftermath of Hurricane Sandy.

Finally, the SBA is required to report to Congress within 30 days on the implementation and status of the Private Disaster Loan (sec. 12083), Immediate Disaster Assistance program (sec. 12084), and Expedited Disaster Assistance Loan program (sec. 12085) as enacted in PL 110-246. These three provisions were authored by the committee Democrats in 2007 after Hurricane Katrina and, as reported by the GAO, have not been implemented. The bill, as amended, also requires the SBA to consult with banks and credit unions on what changes need to be made in order to implement the above provisions in response to disasters, such as Hurricane Sandy. The SBA shall report to Congress on the findings in this section six 6 months after date of enactment of the act.

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