

SMALL CONTRACTORS IMPROVE COMPETITION ACT OF
2015

APRIL 19, 2016.—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

[To accompany H.R. 1481]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 1481) to amend the Small Business Act to strengthen the small business industrial base, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Small Contractors Improve Competition Act of 2015”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Including subcontracting goals in agency responsibilities; reports.
- Sec. 3. Data quality improvement.
- Sec. 4. Notice and justification requirements for bundling or consolidation of contract requirements.
- Sec. 5. Joint venturing and teaming.
- Sec. 6. Limitations on reverse auctions.
- Sec. 7. Revision to the nonmanufacturer rule.
- Sec. 8. Certification requirements for procurement center representatives.
- Sec. 9. Certification requirements for Business Opportunity Specialists.
- Sec. 10. Certification requirements for commercial market representatives.

SEC. 2. INCLUDING SUBCONTRACTING GOALS IN AGENCY RESPONSIBILITIES; REPORTS.

(a) **IN GENERAL.**—Section 1633(b) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 2076; 15 U.S.C. 631 note) is amended by striking “assume responsibility for of the agency’s success in achieving small business contracting goals and percentages” and inserting “assume responsibility for the agency’s success in achieving each of the small business prime contracting and subcontracting goals and percentages”.

(b) GAO STUDY AND REPORT ON ACCOUNTABILITY FOR SUBCONTRACTING.—

(1) STUDY.—Not later than 180 days after the date of enactment of the Small Contractors Improve Competition Act of 2015, the Comptroller General of the United States shall begin a study, which shall be conducted for a period of 1 year, to assess whether the systems of an agency or department accurately record the data necessary to comply with any requirements related to subcontracting at any tier under the Small Business Act (15 U.S.C. 631 et seq.).

(2) REPORT.—Not later than 90 days after the date on which the study described in paragraph (1) is completed, the Comptroller General shall submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the results of such study.

(c) GAO STUDY AND REPORT ON SIZE STATUS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study—

(A) to assess whether Federal agencies are accurately identifying the size status of business concerns awarded contracts in the Federal Procurement Data System as small business concerns; and

(B) to identify, to the extent practicable, the impact of incorrect size status designations on meeting the requirements related to goals in subsections (g) and (h) of section 15 of the Small Business Act (15 U.S.C. 644).

(2) CONTENTS.—The study described in paragraph (1) shall include—

(A) a description of the procedures and processes of each Federal agency, including the roles of the individuals described in section 1633(b) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 2076; 15 U.S.C. 631 note) and the training provided to the acquisition workforce of such agency (as described under section 1703 of title 41, United States Code);

(B) a description of the extent to which such processes and procedures help ensure that business concerns are assigned the most appropriate size status;

(C) a description of the interactions among the Federal Procurement Data System, the System for Award Management (as described under subpart 4.11 of title 48, Code of Federal Regulations) and comparable systems run by the Small Business Administration and recommendations for improving each system to reduce errors in reporting size status; and

(D) recommendations on how to improve the accuracy of the goaling reports required under section 15(h) of the Small Business Act (15 U.S.C. 644(h)).

(3) REPORT.—Not later than 1 year after the date of enactment of the Small Contractors Improve Competition Act of 2015, the Comptroller General shall submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate containing the results of the study conducted under paragraph (1).

(4) DEFINITIONS.—In this subsection, the following definitions shall apply:

(A) FEDERAL AGENCY.—The term “Federal agency” has the meaning given such term in section 3(b) of the Small Business Act (15 U.S.C. 632(b)).

(B) FEDERAL PROCUREMENT DATA SYSTEM.—The term “Federal Procurement Data System” means the system referred to in section 1122(a)(4)(A) of title 41, United States Code, or any successor system.

(C) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 3. DATA QUALITY IMPROVEMENT.

(a) IN GENERAL.—Section 15(s) of the Small Business Act (15 U.S.C. 644(s)) is amended—

(1) by redesignating paragraph (4) as paragraph (6); and

(2) by inserting after paragraph (3) the following new paragraphs:

“(4) IMPLEMENTATION.—Not later than the first day of fiscal year 2017, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

“(5) CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate certification of the accuracy and completeness of data reported on bundled and consolidated contracts.”.

(b) GAO STUDY.—

(1) STUDY.—Not later than the first day of fiscal year 2018, the Comptroller General of the United States shall initiate a study on the effectiveness of the

plan described in section 15(s) of the Small Business Act (15 U.S.C. 644(s)) that shall assess whether contracts were accurately labeled as bundled or consolidated.

(2) **CONTRACTS EVALUATED.**—For the purposes of conducting the study described in paragraph (1), the Comptroller General of the United States—

(A) shall evaluate, for work in each of sectors 23, 33, 54, and 56 (as defined by the North American Industry Classification System), not fewer than 100 contracts in each sector;

(B) shall evaluate only those contracts—

(i) awarded by an agency listed in section 901(b) of title 31, United States Code; and

(ii) that have a Base and Exercised Options Value, an Action Obligation, or a Base and All Options Value (as such terms are defined in the Federal procurement data system described in section 1122(a)(4)(A) of title 41, United States Code, or any successor system); and

(C) shall not evaluate contracts that have used any set aside authority.

(3) **REPORT.**—Not later than 12 months after initiating the study required by paragraph (1), the Comptroller General of the United States shall report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the results from such study and, if warranted, any recommendations on how to improve the quality of data reported on bundled and consolidated contracts.

SEC. 4. NOTICE AND JUSTIFICATION REQUIREMENTS FOR BUNDLING OR CONSOLIDATION OF CONTRACT REQUIREMENTS.

(a) **NOTICE OF CONTRACT CONSOLIDATION FOR ACQUISITION STRATEGIES.**—Section 44(c)(2) of the Small Business Act (15 U.S.C. 657q(c)(2)) is amended by adding at the end the following:

“(C) **NOTICE.**—Not later than 7 days after making a determination that an acquisition strategy involving a consolidation of contract requirements is necessary and justified under subparagraph (A), the senior procurement executive or Chief Acquisition Officer shall publish a notice on a public website that such determination has been made. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the senior procurement executive or Chief Acquisition Officer shall publish a justification for the determination, which shall include the information in subparagraphs (A) through (E) of paragraph (1).”

(b) **NOTICE OF CONTRACT CONSOLIDATION FOR PROCUREMENT STRATEGIES.**—Section 15(e)(3) of such Act (15 U.S.C. 644(e)(3)) is amended to read as follows:

“(3) **STRATEGY SPECIFICATIONS.**—If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include following information:

“(A) The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.

“(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

“(C) An assessment of—

“(i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

“(ii) the specific actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.”

(c) **TECHNICAL AMENDMENT.**—Section 44(c)(1) of such Act (15 U.S.C. 657q(c)(1)) is amended by striking “Subject to paragraph (4), the head” and inserting “The head”.

SEC. 5. JOINT VENTURING AND TEAMING.

(a) **JOINT VENTURE OFFERS FOR BUNDLED OR CONSOLIDATED CONTRACTS.**—Section 15(e)(4) of the Small Business Act (15 U.S.C. 644(e)(4)) is amended to read as follows:

“(4) **CONTRACT TEAMING.**—

“(A) IN GENERAL.—In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern may submit an offer that provides for use of a particular team of subcontractors or a joint venture of small business concerns for the performance of the contract.

“(B) EVALUATION OF OFFERS.—The head of the agency shall evaluate the offer of a team or a joint venture of small business concerns in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

“(i) TEAMS.—When evaluating an offer of a small business prime contractor whose offer includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the team.

“(ii) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns, if the joint venture does not have sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities past performance of the joint venture.

“(C) STATUS AS A SMALL BUSINESS CONCERN.—Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern with respect to the performance of a contract described in subparagraph (A).”

(b) TEAM AND JOINT VENTURES OFFERS FOR MULTIPLE AWARD CONTRACTS.—Section 15(q)(1) of such Act (15 U.S.C. 644(q)(1)) is amended—

(1) in the heading, by inserting “AND JOINT VENTURE” before “REQUIREMENTS”;

(2) by striking “Each Federal agency” and inserting the following:

“(A) IN GENERAL.—Each Federal agency”; and

(3) by adding at the end the following new subparagraphs:

“(B) TEAMS.—When evaluating an offer of a small business prime contractor whose offer includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the offeror.

“(C) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not have sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

“(D) USE OF SMALL BUSINESS TEAMS OR JOINT VENTURES.—

“(i) IN GENERAL.—For contracts awarded under section 8(a), 8(m), 15(a), 15(j), 31, or 36 to a small business team or a joint venture of small business concerns, the contracting officer shall certify annually to the Administration, for each year the contract is in effect, that each small business concern member of such team or joint venture has the same status of a small business concern, small business concern owned and controlled by service-disabled veterans, qualified HUBZone small business concern, small business concern owned and controlled by socially and economically disadvantaged individuals, or small business concern owned and controlled by women, as applicable, that such concern had at the time the contract was awarded.

“(ii) EXCEPTION.—The requirements of clause (i) shall not apply to a contract awarded to a joint venture of small business concerns that is a protege under a mentor-protege program approved pursuant to section 45.”

(c) RULEMAKING.—Not later than 1 year after the date of enactment of this section, the Administrator of the Small Business Administration shall issue any regulations necessary to carry out the amendments made by this section.

SEC. 6. LIMITATIONS ON REVERSE AUCTIONS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, when used appropriately, reverse auctions may improve the Federal Government’s procurement of commercially available commodities by increasing competition, reducing prices, and improving opportunities for small businesses.

(b) LIMITATIONS ON REVERSE AUCTIONS.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

- (1) by redesignating section 47 (15 U.S.C. 631 note) as section 48; and
- (2) by inserting after section 46 the following new section:

“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS.

“(a) PROHIBITION ON USING REVERSE AUCTIONS FOR COVERED CONTRACTS.—In the case of a covered contract described in subsection (c), reverse auction methods may not be used if the award of the contract is to be made under—

- “(1) section 8(a);
- “(2) section 8(m);
- “(3) section 15(a);
- “(4) section 15(j);
- “(5) section 31; or
- “(6) section 36.

“(b) LIMITATIONS ON USING REVERSE AUCTIONS.—In the case of the award of a contract to be made under paragraphs (1) through (6) of subsection (a) that is not a covered contract, reverse auction methods may be used pursuant to the following requirements:

“(1) DECISIONS REGARDING USE OF A REVERSE AUCTION.—A contracting officer shall make the following decisions, which may not be delegated to any person except for another contracting officer who meets the training requirements of paragraph (2):

“(A) A decision to use reverse auction methods as part of the competition for award of a contract.

“(B) Any decision made after the decision described in subsection (A) regarding the appropriate evaluation criteria, the inclusion of vendors, the acceptability of vendor submissions (including decisions regarding timeliness), and the selection of the winner.

“(2) TRAINING REQUIRED.—Only a contracting officer who has received training on the appropriate use and supervision of reverse auction methods of contracting may supervise or use such methods in a procurement for a contract. The training shall be provided by, or similar to the training provided by, the Defense Acquisition University as described in section 824 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291).

“(3) NUMBER OF OFFERS; REVISIONS TO BIDS.—A Federal agency may not award a contract using a reverse auction method if only one offer is received or if offerors do not have the ability to submit revised bids with lower prices throughout the course of the auction.

“(4) TECHNICALLY ACCEPTABLE OFFERS.—A Federal agency awarding a contract using a reverse auction method shall evaluate the technical acceptability of offers only as technically acceptable or unacceptable.

“(5) USE OF PRICE RANKINGS.—A Federal agency may not award a contract using a reverse auction method if at any time during the award process the Federal agency misinforms an offeror about the price ranking of the offeror’s last offer submitted in relation to offers submitted by other offerors.

“(6) USE OF THIRD-PARTY AGENTS.—If a Federal agency uses a third party agent to assist with the award of contracts using a reverse auction method, the Federal agency shall ensure that—

“(A) inherently governmental functions (as such term is used in section 2303 of title 41, United States Code) are not performed by private contractors, including by the third party agent;

“(B) information on the past contract performance of offerors created by the third party agent and shared with the Federal agency is collected, maintained, and shared in compliance with section 1126 of title 41, United States Code;

“(C) information on whether an offeror is a responsible source (as defined in section 113 of title 41, United States Code) that is created by the third party agent and shared with the Federal agency is shared with the offeror and complies with section 8(b)(7) of this Act; and

“(D) disputes between the third party agent and an offeror may not be used to justify a determination that an offeror is not a responsible source (as defined in section 113 of title 41, United States Code) or to otherwise restrict the ability of an offeror to compete for the award of a contract or task or delivery order.

“(c) DEFINITIONS.—In this section:

“(1) CONTRACTING OFFICER.—The term ‘contracting officer’ has the meaning given that term in section 2101(1) of title 41, United States Code.

“(2) COVERED CONTRACT.—The term ‘covered contract’ means a contract—

- “(A) for design and construction services;
- “(B) for goods purchased to protect Federal employees, members of the Armed Forces, or civilians from bodily harm; or
- “(C) for goods or services other than those goods or services described in subparagraph (A) or (B)—
 - “(i) to be awarded based on factors other than price and technical responsibility; or
 - “(ii) if awarding the contract requires the contracting officer to conduct discussions with the offerors about their offer.

“(3) DESIGN AND CONSTRUCTION SERVICES.—The term ‘design and construction services’ means—

- “(A) site planning and landscape design;
- “(B) architectural and interior design;
- “(C) engineering system design;
- “(D) performance of construction work for facility, infrastructure, and environmental restoration projects;
- “(E) delivery and supply of construction materials to construction sites;
- “(F) construction, alteration, or repair, including painting and decorating, of public buildings and public works; and
- “(G) architectural and engineering services as defined in section 1102 of title 40, United States Code.

“(4) REVERSE AUCTION.—The term ‘reverse auction’ means, with respect to procurement by an agency, an auction between a group of offerors who compete against each other by submitting offers for a contract or task or delivery order with the ability to submit revised offers with lower prices throughout the course of the auction.”

SEC. 7. REVISION TO THE NONMANUFACTURER RULE.

(a) PROCUREMENT CONTRACTS.—Section 8(a)(17) of the Small Business Act (15 U.S.C. 637(a)(17)) is amended—

(1) in subparagraph (A), by striking “any procurement contract” and all that follows through “section 15” and inserting “any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection or subsection (m), or section 15(a), 31, or 36,”; and

(2) by adding at the end the following new subparagraph:

“(C) LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.”

(b) SUBCONTRACTOR CONTRACTS.—Section 46(a)(4) of such Act (15 U.S.C. 657s(a)(4)) is amended by striking “for supplies from a regular dealer in such supplies” and inserting “which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction”.

(c) PUBLICATION OF CLASS WAIVERS.—The Administrator of the Small Business Administration shall publish a list of waivers to the requirements of section 8(a)(17) of the Small Business Act (15 U.S.C. 637(a)(17)) granted for a class of products as an appendix to section 121.406 of title 13, Code of Federal Regulations (or any successor regulation).

(d) RULEMAKING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator of the Small Business Administration shall issue any rules necessary to carry out the amendments made by this section.

(2) REPORT.—Not later than 1 year after the issuance of the rules required in paragraph (1), the Comptroller General shall—

(A) review the compliance of the Small Business Administration with the application of the requirements of section 8(a)(17) of the Small Business Act (15 U.S.C. 637(a)(17)); and

(B) submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate with any recommendations on how to increase compliance with such requirements.

SEC. 8. CERTIFICATION REQUIREMENTS FOR PROCUREMENT CENTER REPRESENTATIVES.

Section 15(l)(5)(A)(iii) of the Small Business Act (15 U.S.C. 644(l)(5)(A)(iii)) is amended by striking “except that” and all that follows through the period at the end and inserting the following: “except that—

“(I) any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years beginning on such date without the required certification; and

“(II) any person hired for such position after January 3, 2013, may have up to one calendar year from the date of employment to obtain the required certification.”.

SEC. 9. CERTIFICATION REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by adding at the end the following new subsection:

“(g) CERTIFICATION REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.—A Business Opportunity Specialist described under section 7(j)(10)(D) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that—

“(1) a Business Opportunity Specialist who was serving on or before January 3, 2013, may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on such date without such a certification; and

“(2) any person hired as a Business Opportunity Specialist after January 3, 2013, may have up to one calendar year from the date of employment to obtain the required certification.”.

(b) CONFORMING AMENDMENT.—Section 7(j)(10)(D)(i) of such Act (15 U.S.C. 636(j)(10)(D)(i)) is amended by striking the second sentence.

SEC. 10. CERTIFICATION REQUIREMENTS FOR COMMERCIAL MARKET REPRESENTATIVES.

Section 4 of the Small Business Act (15 U.S.C. 633), as amended by section 9 of this Act, is further amended by adding at the end the following new subsection:

“(h) CERTIFICATION REQUIREMENTS FOR COMMERCIAL MARKET REPRESENTATIVES.—A commercial market representative referred to in section 15(q)(3) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that—

“(1) a commercial market representative who was serving on or before the date of enactment of the Small Contractors Improve Competition Act of 2015 may continue to serve as a commercial market representative for a period of 5 years beginning on such date without such a certification; and

“(2) any person hired as a commercial market representative after the date of enactment of the Small Contractors Improve Competition Act of 2015 may have up to one calendar year from the date of employment to obtain the required certification.”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 1481, the “Small Contractors Improve Competition Act of 2015,” is to amend the Small Business Act (the Act)¹ to reduce barriers to the participation of small businesses as prime contractors and subcontractors on federal procurements. Small business² participation brings necessary competition to the government marketplace, adds innovation, and creates new jobs. Contracting officers, however, generally prefer contractors with whom they have experience; typically, this preference hampers the ability of small businesses to obtain federal contracts. Thus, creating the correct incentives to improve small business participation, increasing transparency in federal contracting, ensuring the contracting practices to not unintentionally inhibit small business participation should reduce the overreliance on a limited corps of contractors.

III. NEED FOR LEGISLATION

The Act finds that awarding prime contracts to small businesses serves the nation in three ways. First, small business contracting is in “the interest of maintaining or mobilizing the Nation’s full

¹Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232 was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85–536, § 1, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657s.

²The Act uses the term “small business concern.” However, this report will use the terms “small business” and “small business concern” interchangeably unless the context requires a specific reference to the term “small business concern.”

productive capacity.”³ Second, small business contracting is “in the interest of war or national defense programs.”⁴ Third, it serves “the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government in each industry category are placed with small-business concerns.”⁵ Ensuring that small businesses can compete for federal contracts offers several benefits—business growth, job creation, greater competition, lower prices, and innovation. During the 114th Congress, the Small Business Committee has held numerous hearings on small businesses in the industrial base.

As a result, the Small Business Committee learned that the small business goaling process is being misused to the detriment of small businesses, and is giving an inaccurate view of the health of the small business industrial and technological base. Under the Small Business Administration’s (SBA) scorecard system, the federal government received an “A” grade for FY 2013.⁶ While an “A” grade and a reasonable percentage of small business prime contracting dollars would seem to indicate that a healthy percentage of dollars are being awarded to small businesses, it is not reasonable when Chart 1 shows that the use of small businesses is declining even as the percentage of dollars awarded to small businesses increases. Additionally, it is worth noting that in obtaining its A, the federal government did not meet half of its numerical goals.⁷

CHART 1—SMALL BUSINESS CONTRACTING FY10–FY14⁸

FY	Total contract dollars (in billions)	Total small business (SB) dollars	Total number of SB actions	Total DoD contract dollars	Total DoD small business dollars	Total number of DoD SB actions	Average value of small business contract action	Average value of DoD small business contract action
11	549.6	103.6	3,346,553	374.1	60.4	2,325,622	30,957.23	25,971.55
12	518.3	100.0	2,584,893	290.1	60.2	1,453,952	38,686.32	41,404.39
13	462.3	91.9	1,560,467	308.5	50.0	711,998	58,892.63	70,224.92
14	444.7	98.9	1,390,987	284.7	55.6	745,626	71,100.59	74,568.22

From FY11 through FY14, the percentage of dollars awarded to small businesses increased each year, from just over 18 percent to approximately 22.25 percent.⁹ At the same time, despite a decline in overall federal spending, the dollars awarded to small businesses remained fairly constant during this period. While this would normally be heralded as a success, a deeper dive into the numbers shows that the number of small business contract actions fell by almost 60 percent and the average size of a contract action increased 230 percent. This reflects that fewer small businesses are winning contracts, but those contracts are worth more, which may indicate

³ Small Business Act, § 15(a), 15 U.S.C. § 644(a).

⁴ *Id.*

⁵ *Id.*

⁶ SBA, “FY 2013 Procurement Scorecard,” available at https://www.sba.gov/sites/default/files/files/FY13_Government-Wide_SB_Procurement_Scorecard_Public_View_2014-04-28.pdf (last accessed February 26, 2015).

⁷ SBA, “FY 2013 Procurement Scorecard,” available at https://www.sba.gov/sites/default/files/files/FY13_Government-Wide_SB_Procurement_Scorecard_Public_View_2014-04-28.pdf.

⁸ *Id.*

⁹ Analysis based upon FPDS, available at <https://www.fpds.gov> (last accessed January 28, 2015). Copies of reports are on file with the Committee.

that some small businesses are doing very well but many others are losing opportunities to compete.

At the Department of Defense (DoD), which is arguably a better reflection of the federal government's ability to maintain a healthy industrial base capable of supporting defense programs, the results were worse. The percentage of contract dollars awarded to small businesses at DoD increased from just over 16 percent to just over 19 percent, but the actual dollars only fluctuated by about 10 percent. The number of small business contract actions at DoD fell by almost 70 percent, and the value of those contract actions rose by nearly 290 percent.

These declining number of contract actions with small businesses cannot simply be explained by shrinking budgets or sequestration, because during the same period, the number of contract actions with large businesses increased by 8 percent. However, the dollar value of the average contract action with a small business increased 230 percent, meaning that fewer small companies are getting contracts, but the contracts they get are getting much bigger. Furthermore, the number of companies registered to do business with the federal government has dropped by over 100,000 from 2012, so that only 273,072 small businesses are still registered to compete for federal contract.¹⁰ This speaks to a greater problem in the industrial base—a declining participation rate.

SBA's Office of Advocacy recently highlighted this small business participation problem. Specifically, Advocacy identified 23 industries in which the government spends over \$500 million per year, but where less than 10 percent of procurements are awarded to small businesses.¹¹ These are areas important to the industrial base where small businesses are not participating, but this is not reflected in the current scorecard process.

Consequently, H.R. 1481 promoted increased small business participation in eight ways. Each will now be briefly discussed.

A. Sec. 2.—Including subcontracting goals in agency responsibilities

Currently, when considering whether senior agency executives are eligible for bonuses, agencies must look at whether they met the small business prime contracting goals. However, agencies don't look at whether the agency is meeting its subcontracting goals. As a consequence, the percentage of subcontract dollars awarded to small businesses has been falling, and is down 2.5% since 2010. Make no mistake about the significance of subcontracting: in FY 2013, small businesses received \$86.7 billion in subcontracts. Subcontracting is an important entry point for federal contractors. Therefore, this provision holds senior agency officials accountable for meeting all the goals.

B. Sec. 3.—Data quality improvement

Contract bundling and consolidation continue to be the top complaint of small contractors. When bundling and consolidation are unjustified, it restricts competition without providing a measurable

¹⁰Data retrieved from the System for Award Management, available at www.sam.gov (last accessed January 28, 2015). This number is down by over 100,000 small businesses from 2012, when DSBS reported 382,092 active small businesses.

¹¹SBA Advocacy, EVALUATION OF THE SMALL BUSINESS PROCUREMENT GOALS ESTABLISHED IN SECTION 15(G) OF THE SMALL BUSINESS ACT 41–42 (2014).

benefit to offset the loss of opportunity. Consequently, since 1997 the Act has required that federal agencies justify the decision to bundle contracts, and take the appropriate steps to mitigate that decision. Unfortunately, eighteen years after the Act was amended, agencies continue to fail to simply identify contracts as bundled. This provision will require the federal government to implement a plan to improve the quality of bundling and consolidation data.

C. Sec. 4.—Notice and justification requirements for bundling or consolidation of contract requirements

Small businesses are permitted to challenge bundling and consolidation through an appeals process at the Government Accountability Office (GAO). However, since consolidation and bundling justifications need not be published for a year after the award of the contract, it makes it impossible for small businesses to challenge the underlying merits of the decision. This provision solves that problem by requiring agencies to publish justifications concurrent with the solicitation.

D. Sec. 5.—Joint venturing and teaming

The Act encourages small businesses to team and joint venture, and the SBA will approve joint ventures to facilitate small businesses participating on federal contracts. In the 112th Congress, this Committee successfully passed legislation as part of the National Defense Authorization Act (NDAA) for FY 2013 to make it easier for small businesses to team by changing the limitations on subcontracting.¹² However, small businesses that do team and joint venture are often unsuccessful at winning contracts because some agencies have stated that the agency will only consider the past performance or financial responsibility of the joint venture or the prime contractor, not the small business members of the joint venture or the parties to the team. As many joint ventures are unpopulated, this all but disqualifies the small business from competition. This provision requires that contracting officers look as the qualifications of team members and members of the joint venture.

E. Sec. 6.—Limitations on reverse auctions

As defined by this provision, reverse auctions are an auction between a group of offerors who compete against each other by submitting offers for requirement, and offerors have the ability to submit revised offers with lower prices throughout the course of the auction. When used properly, reverse auctions are an important tool that may benefit taxpayers and contracting agencies. However, when used inappropriately, reverse auctions may place taxpayers, warfighters and small businesses at risk. GAO has issued reports calling for reforms of the reverse auction process,¹³ and bid protests have been sustained because of abuses of reverse auctions.¹⁴ Therefore, this language creates a new section of the Act to limit the use of reverse auctions when using small business contracting

¹² FY 13 NDAA, Pub. L. No. 112-239 (2013).

¹³ See, e.g., GAO, REVERSE AUCTIONS, GUIDANCE IS NEEDED TO MAXIMIZE COMPETITION AND ACHIEVE COST SAVINGS GAO-14-108 (2013).

¹⁴ See, e.g., *Export 220Volt, Inc.* B-412303.2 (Jan 20, 2016); *Latvian Connection, LLC* B-410947 (2015).

authorities. Specifically, it requires training of contracting officers, and prohibits the use of reverse auctions for sole source contracts or contracts with inadequate competition. It also states that reverse auctions should only be used when the good or service being purchased can be considered only either technically acceptable or unacceptable. This provision requires that the government communicate honestly with bidders regarding the ranking of offers, as some reverse auctions have misled offerors regarding the status of bids. The bill also makes it clear that when using a third-party reverse auction service, the government must still follow all of the normal procurement rules, as there are cases where a third party provider is excluding companies from competing or using third party data to inform responsibility determinations. Finally, the provision states that reverse auctions may only be used for contracts other than contracts for construction, goods used to protect people from bodily harm, and technical goods and services.

F. Sec. 7.—Revision to the nonmanufacturer rule

The Nonmanufacturer Rule exists to protect taxpayers—it ensures that a small business is not simply acting as a front for a large business in order to receive a contract through restricted competition. Specifically, the Act requires that a small offeror “represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted.”¹⁵ This requirement has historically been applied only to contracts for supplies, and SBA has proposed a rule to further clarify that this is the intent of the NMR.¹⁶

However, the Court of Federal Claims (COFC) recently issued a decision in *Rotech Healthcare, Inc. v. United States* that invalidated SBA’s current regulations limiting the NMR to the procurement of goods.¹⁷ The COFC found that as the Act references “any procurement for goods” SBA may not interpret the statute to find that Congress only intended that the NMR apply to purchases that are primarily for goods.¹⁸

The Rotech decision could have particularly dire consequences for construction and A&E companies. If the NMR were applied as suggested by the COFC, a builder would have to use steel, concrete, and other construction materials manufactured by a small business. Indeed, the opinion could be read to suggest that an architect’s design would need to be provided on paper manufactured by a domestic small business, using ink manufactured by a domestic small business. This is an inefficient, and irrational application of the rule, and nearly impossible to comply with given that contractor still must comply with the limitation on subcontracting rules. SBA and the Committee on Small Business both agree that this is inappropriate, and does not protect the government against fraud. This provision will preserve the long standing interpretation of the NMR.

¹⁵ § 8(a)(17)(B)(iv); 15 U.S.C. § 637(a)(17)(B)(iv).

¹⁶ *Supra* note 58, 79 Fed. Reg. at 77,967.

¹⁷ Case No. 14–502C (September 19, 2014).

¹⁸ *Id.* at 6–8.

G. Sec. 8.—Certification requirements for procurement center representatives

The FY 13 NDAA reformed the job description for Procurement Center Representatives (PCR) to require that new PCRs have an advanced certification in federal contracting, and that existing PCRs obtain that certification within five years.¹⁹ This was deemed appropriate so that PCRs could better negotiate with contracting officers. However, the SBA has stated that in some areas it is difficult to find qualified personnel, resulting in vacancies. This provision addresses that problem by allowing the hire of a new PCR if the SBA can obtain the necessary certification for the PCR within one calendar year.

H. Sec. 9.—Certification requirements for Business Opportunity Specialists

SBA's Business Opportunity Specialists (BOS) work with small contractors in the district offices. The FY 13 NDAA required that BOSs have an entry level federal contracting certification.²⁰ As with the PCR program, this made it difficult to hire qualified individuals in some areas without incurring relocation expenses. Section 9 gives SBA one year from the date of hire to train the BOSs to the necessary certification level.

I. Sec. 10.—Certification requirements for commercial market representatives

Like the PCRs and BOSs, the SBA's Commercial Market Representatives are crucial to the success of small businesses. CMRs assist large federal prime contractors attempting to comply with the requirements of the Act that govern small business subcontracting plans.²¹ They also assist small businesses attempting to obtain work as a subcontractor to a large federal prime contractor. This provision ensures that CMRs receive the necessary certification to perform their duties.

IV. HEARINGS

In the 114th Congress, the Committee held four hearing that looked at the issues covered by H.R. 1481. On February 12, 2015, the Full Committee held a hearing titled "Contracting and the Industrial Base" that examined NMR issues and joint venturing and teaming issues. On March 7, 2015, the Subcommittee on Contracting and Workforce held a hearing titled "Contracting and the Industrial Base II: Bundling, Goaling and the Office of Hearings and Appeals" that looked at the use of subcontracting, questions of data quality, abuse of bundling and consolidation, and the subcontracting goals. On March 19, 2015, the Subcommittee on Contracting and Workforce held a hearing on "Contracting and the Industrial Base III: Reverse Auctions, Verification and the SBA's Role in Rulemaking," that examined reverse auctions. Finally, the PCR, CMR, and BOS programs were the subject of a hearing of the Subcommittee on Contracting and Workforce on December 9, 2015

¹⁹ FY 13 NDAA at § 1621.

²⁰ *Id.* at § 1622.

²¹ See the Act, § 8(d).

called “Supporting Success: Empowering Small Business Advocates.”

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 25, 2015 and ordered H.R. 1481 reported, as amended, to the House by a voice vote at 1:28 pm. During the markup, three amendments were offered, including an amendment in the nature of a substitute. All amendments were adopted. Disposition of the amendments is addressed below and is based on the order amendments were filed with the Clerk of the Committee and not necessarily in the order that they were considered at the markup.

The amendment in the nature of a substitute officer by Chairman Chabot (R–OH) was adopted at 1:08 p.m. It added section 10 to the bill, and made other technical corrections.

Amendment Number One was offered by Ms. Hahn (D–CA). It amended section 3 of the bill to add a requirement that GAO report on the extent to which agencies are ensuring that the correct size status of business is being reported. The amendment passed by voice vote at 1:19 p.m.

Amendment Number Two was filed by Ms. Chu (D–CA). It amended section 3 of the bill to add a GAO on the capacity of the subcontracting system of record. The amendment was adopted by voice vote at 1:24 pm.

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. There were no recorded votes on H.R. 1481.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 1481 AS AMENDED

Section 1. Short title; table of contents

This Section designates the bill as the “Small Contractors Improve Competition Act of 2015” and provides the table of contents.

Section 2. Including subcontracting goals in agency responsibilities; reports

(a) In general

This subsection amends section 1633(b) of the FY 13 NDAA. The FY 13 NDAA required that senior executives assume responsibility for the agency’s success in achieving small business contracting goals and percentages. The subsection amends the language to clarify that senior executives are responsible for the prime contracting and subcontracting goals of the agency.

(b) GAO study and report on accountability for subcontracting

Subsection (b) adds a requirement that within 180 days of enactment, GAO begin to study whether agency data collection systems can accurately collect subcontracting records. The GAO is required to report back 90 days after the report is completed.

(c) GAO study and report on size status

Subsection (c) adds a requirement that within one year of enactment, GAO report to the committee with recommendations on how to improve the accuracy of the small business goaling report. In particular, GAO is required to examine the processes and procedures that ensure that business concerns are assigned to the most appropriate size status.

Section 3. Data quality improvement

(a) In general

This subsection amends section 15(s) of the Act to add a new paragraph requiring the implementation of the data quality improvement plan. The plan is already required by section 15(s) of the Act, but lacks a requirement that it be implemented.

(b) GAO study

Subsection (b) adds a requirement that GAO initiate a study as to the effectiveness of the data quality improvement plan required by section 15(s) of the Act. The report is required by October 1, 2017.

Section 4. Notice and justification requirements for bundling and consolidation of contract requirements

(a) Notice of contract consolidation for acquisition strategies

Subsection (a) amends section 44(c)(2) of the Act. Section 44(c) requires that the Chief Acquisition Officer (CAO) of an agency consolidating a contract publish a justification explaining why the consolidation is necessary. However, these justifications either never appear or cannot be found by small contractors. This subsection requires that the CAO publish a notice that the determination to consolidate has been made at least seven days before publishing the solicitation, and that the publication include the justification. This will allow small contractors the opportunity to challenge the consolidation as unduly restrictive of competition prior to submitting an offer.

(b) Notice of contract consolidation for acquisition strategies

Subsection (b) amends section 15(e)(3) of the Act. Section 15(e) requires that a contracting officer bundling contract requirements justify why the bundling is necessary. However, these justifications either never appear or cannot be found by small contractors. This subsection requires that the contracting officer publish a notice that the determination to bundle has been made at least seven days before publishing the solicitation, and that the publication include the justification. This will allow small contractors the opportunity to challenge the consolidation as unduly restrictive of competition prior to submitting an offer.

(c) Technical amendment

This subsection makes technical corrections.

Section 5. Joint venturing and teaming

(a) Joint venture offers for bundled or consolidated contracts

Subsection (a) amends section 15(e)(4) of the Act. Section 15(e)(4) requires that in the case of a solicitation of offers for a bundled contract, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract and that the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. However, agencies have issued solicitations excluding offers from joint ventures. This subsection clarifies that offers from joint ventures shall be evaluated by including the past performance and experience of the parties to a joint venture or team.

(b) Team and joint venture offers for bundled or consolidated contracts

Subsection (b) amends section 15(q)(1) of the Act. Section 15(q)(1) requires that each federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns. However, some agencies were refusing to let teams and joint ventures of small businesses bid on multiple award contracts unless the small businesses comprising the team or joint venture had past performance as that team or joint venture. Given that working together frequently can be a reason for SBA to find that small business concerns are affiliated, and therefore no longer small, this posed an insurmountable barrier for many small businesses. Therefore, this subsection clarifies that teams or joint ventures from small businesses shall be allowed to bid using their individual past performance experience rather than requiring collective past performance experience.

(c) Rulemaking

Subsection (c) requires that the SBA issue implementing regulations within one year.

Section 6. Limitations on reverse auctions

(a) Sense of Congress

This subsection provides a sense of Congress that reverse auctions, when used appropriately, may improve the federal government's procurement of commercially available goods.

(b) Limitations on reverse auctions

Subsection (b) creates a new section 47 of the Act containing limitations on the use of reverse auctions. First, the new section defines a reverse auction as an auction between a group of offerors who compete against each other by submitting offers for a contract or task or delivery order with the ability to submit revised offers with lower prices throughout the course of the auction. The new section prohibits the use of reverse auctions if the contract is awarded using a small business set-aside contract, or a set-aside contract for any of the small business programs and is for design,

construction, body armor, or goods where technical standards vary significantly. Next, it states that for contracts not covered by the prohibition, reverse auctions are allowed if the decision is made by a trained contracting officer, if the agency allows bid revisions and ensures that it receives more than one bid, if it only considers technical acceptability on a pass or fail basis, and if it makes the award based on the lowest price. Further, agencies are not allowed to use third party agents to avoid contracting laws.

Section 7. Revision to the nonmanufacturer rule

(a) Procurement contracts

Subsection (a) amends section 8(a)(17) of the Act to clarify that the NMR shall apply to contracts using a small business set-aside authority when the principle purpose of the contract is to purchase supplies. It further clarifies that the NMR shall not apply to contracts that are principally for services or construction.

(b) Subcontractor contracts

Subsection (b) amends section 46(a)(4) of the Act to clarify that when applying the limitation on subcontracting rules of the Act, the NMR shall only apply to contracts that are principally for supplies.

(c) Publication of class waivers

Subsection (c) directs the SBA Administrator to publish a list of waivers to the NMR if they are granted pursuant to section 8(a)(17) of the Act.

(d) Rulemaking

This subsection requires that SBA promulgate the necessary rules within one year. Further, it requires that the GAO review SBA's compliance with the waiver provisions of section 8(a)(17) of the Act and report back to the committee.

Section 8. Certification requirements for procurement center representatives

This section amends section 15(1) of the Act, which governs the duties of the Procurement Center Representatives. Specifically, it amends paragraph (5)(A)(iii), which provides the certification requirements for Procurement Center Representatives. The amendment allows SBA to hire new Procurement Center Representatives that do not meet the training requirements if they can obtain the required certification within one year.

Section 9. Certification requirements for business opportunity specialists

(a) In general

This section adds a new subsection (g) to section 4 of the Act. The new subsection (g) encapsulates the training requirements for Business Opportunity Specialists previously found in section 7(j)(10)(D)(i) of the Act. Further, it allows SBA to hire new Business Opportunity Specialist Procurement that do not meet the certification requirements if they can obtain the required certification within one year.

(b) Conforming amendment

This subsection strikes the part of section 7(j)(D)(i) of the Act that was moved to the new section 4(g).

Section 10. Certification requirements for commercial market representatives

This section adds a new subsection 4(h) to the Act. It requires that new Commercial Market Representatives have at least an introductory certification in federal procurement. Current Commercial Market Representatives are provided with five years to obtain the certification. Alternatively, SBA may hire a Commercial Market Representative without the required certification if the certification will be obtained within one year.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At the time H.R. 1481 was reported to the House, the Congressional Budget Office had not provided a cost estimate.

IX. UNFUNDED MANDATES

H.R. 1481 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 provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that any additional appropriation will be required due to the enactment of H.R. 1481. H.R. 1481 does not direct new spending, but instead addresses the opportunity to increase competition for federal contractors. Increased competition may save taxpayer funds.

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. 1481 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, cls. 1, 3, and 18 and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 1481 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. 1481 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. 1481 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. 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. 1481 includes a number of provisions designed to improve the competitive viability of small businesses as federal prime and subcontractors and to improve agency compliance with the Small Business Act.

XVII. CHANGES TO EXISTING LAW

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):

SECTION 1633 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

SEC. 1633. SENIOR EXECUTIVES.

(a) TRAINING.—Programs established for the development of senior executives under section 3396(a) of title 5, United States Code, shall include training with respect to Federal procurement requirements, including contracting requirements under the Small Business Act (15 U.S.C. 631 et seq.).

(b) RESPONSIBILITY FOR ACHIEVING SMALL BUSINESS GOALS.—The head of an agency shall take steps to ensure that members of the senior executive service, as defined under section 3396(a) of title 5, United States Code, responsible for acquisition, other senior officials responsible for acquisition, and other members of the senior executive service, as appropriate, [assume responsibility for of the agency’s success in achieving small business contracting goals and percentages] *assume responsibility for the agency’s success in*

achieving each of the small business prime contracting and subcontracting goals and percentages by—

- (1) promoting a climate or environment that is responsive to small business concerns;
- (2) communicating the importance of achieving the agency's small business contracting goals; and
- (3) encouraging small business awareness, outreach, and support.

(c) DEFINITIONS.—In this section the term “responsible for acquisition”, with respect to a member of the senior executive service or other senior official, means such a member or official who acquires services or supplies, directs agency organizations to acquire services or supplies, oversees acquisition officials, including program managers, contracting officers, and other acquisition workforce personnel responsible for formulating and approving acquisition strategies and plans.

* * * * *

SMALL BUSINESS ACT

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SEC. 4. (a) In order to carry out the policies of this Act there is hereby created an agency under the name “Small Business Administration” (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this Act, the term “United States” includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust territory of the Pacific Islands, and the District of Columbia.

(b)(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958) to assist

in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 32. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of this Act which provide assistance to minority small business concerns. One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 22.

(2) the Administrator also shall be responsible for—

(A) establishing and maintaining an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. To that end, the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include, but need not be limited to, data on—

- (i) employment layoffs, and new hires;
- (ii) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;
- (iii) number of business formation and failures;
- (iv) sales and new orders;
- (v) back orders;
- (vi) investment in plant and equipment;
- (vii) changes in inventory and rate of inventory turnover;
- (viii) sources and amounts of capital investment, including debt, equity, and internally generated funds;
- (ix) debt to equity ratios;
- (x) exports;
- (xi) number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm; and
- (xii) concentration ratios; and

(B) publishing annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A) of this subsection.

(3) RISK MANAGEMENT DATABASE.—

(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(B) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administration considers ap-

appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to—

- (i) the identity of the institution making the guaranteed loan or issuing the debenture;
- (ii) the identity of the borrower;
- (iii) the total dollar amount of the loan or debenture;
- (iv) the total dollar amount of government exposure in each loan;
- (v) the district of the Administration in which the borrower has its principal office;
- (vi) the principal line of business of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);
- (vii) the delinquency rate for each program (including number of instances and days overdue);
- (viii) the number and amount of repurchases, losses, and recoveries in each program;
- (ix) the number of deferrals or forbearances in each program (including days and number of instances);
- (x) comparisons on the basis of loan program, lender, district and region of the Administration, for all the data elements maintained; and
- (xi) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.

(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall—

- (i) be operational not later than June 30, 1997; and
- (ii) capture data beginning on the first day of the second quarter of fiscal year 1997 beginning after such date and thereafter.

(4)(A) The Administrator shall establish a small business computer security and education program to—

- (i) provide small business concerns information regarding—
 - (I) utilization and management of computer technology;
 - (II) computer crimes committed against small business concerns; and
 - (III) security for computers owned or utilized by small business concerns;
- (ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and
- (iii) provide training opportunities to educate small business users on computer security techniques.

(B) The Administrator, after consultation with the Director of Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.

(c)(1) There are hereby established in the Treasury the following revolving funds; (A) a disaster loan fund which shall be available for financing functions performed under section 7(b)(1), 7(b)(2),

7(b)(3), 7(b)(4), 7(d)(2), and 7(m) of this Act; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 5(g), 7(a), and 8(a) of this Act, and titles III, IV and V of the Small Business Investment Act of 1958.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(d)(2), and 7(g) of this Act shall be paid into a disaster loan fund; and (B) pursuant to sections 5(g), 7(a), 7(h), 7(i), 7(l), 7(m), and 8(a) of this Act, and titles III, IV and V of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine.

(4) The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849)) for wholly owned Government corporations.

(5)(A) The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by section 4(c)(1) of this Act and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act, as amended, are extended to include the purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(B)(i) Moneys in the funds established in subsection (c)(1) not needed for current operations may be paid into miscellaneous receipts of the Treasury.

(ii) Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under this Act.

(C) Except on those loan disbursements on which interest is paid under subsection (B)(ii), the Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this Act and titles III and V of the Small business Investment Act of 1958 providing the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(D) There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the funds established by subsection (c)(1), but not previously reimbursed.

(d) There is hereby created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio: The Administration, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

(e) PROHIBITION ON THE PROVISION OF ASSISTANCE.—Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

(f) CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.—

(1) IN GENERAL.—For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this Act, including a recipient of a direct loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(A) administrative order;

(B) court order; or

(C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services,

that requires the recipient to pay child support, as such term is defined in section 462(b) of the Social Security Act.

(2) ENFORCEMENT.—Not later than 6 months after the date of enactment of this subsection, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.

(g) *CERTIFICATION REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.*—A Business Opportunity Specialist described under section 7(j)(10)(D) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that—

(1) a Business Opportunity Specialist who was serving on or before January 3, 2013, may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on such date without such a certification; and

(2) any person hired as a Business Opportunity Specialist after January 3, 2013, may have up to one calendar year from the date of employment to obtain the required certification.

(h) *CERTIFICATION REQUIREMENTS FOR COMMERCIAL MARKET REPRESENTATIVES.*—A commercial market representative referred to in section 15(q)(3) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that—

(1) a commercial market representative who was serving on or before the date of enactment of the Small Contractors Improve Competition Act of 2015 may continue to serve as a commercial market representative for a period of 5 years beginning on such date without such a certification; and

(2) any person hired as a commercial market representative after the date of enactment of the Small Contractors Improve Competition Act of 2015 may have up to one calendar year from the date of employment to obtain the required certification.

* * * * *

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

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be

paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

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

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

(C) PREPAYMENT CHARGES.—

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

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

(II) the prepayment is voluntary;

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

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

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

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

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

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

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

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

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

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining “sound value” shall include, but not be limited to, quality of the product

or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further*, That such status need not be as sound as that required for general loans under this subsection; and

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 au-

thorized 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;

(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 suf-

ferred 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 relevant 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 Adminis-

trator 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 cooperation 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.

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 paragraph, 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 such 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) **FEEES.**—
- (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 Administration'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.

(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 subsection 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 pay-

ment 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 imme-

diately 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, device, 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.

(1) 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, particularly 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 obligations 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 subparagraph (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 microlending 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 nonprofit 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 Ad-

ministration 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.

SEC. 8. (a)(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsider-

ation is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a) and (c) of the first section 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 additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,” approved August 24, 1935 (49 Stat. 793), no small business concern shall be required

to provide any amount of any bond as a condition or receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

(D) that small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a “fair market price” shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The

agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the

per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(G) subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to

other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

(B) The actions referred to in subparagraph (A) are—

- (i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);
- (ii) a termination pursuant to section 7(j)(10)(F);
- (iii) a graduation pursuant to section 7(j)(10)(G); and
- (iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

- (i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;
- (ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(15) For purposes of this subsection, the term “Native Hawaiian Organization” means any community service organization serving Native Hawaiians in the State of Hawaii which—

(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant’s business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for **any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15** *any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection or subsection (m), or section 15(a), 31, or 36, solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.*

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

- (i) be primarily engaged in the wholesale or retail trade;
- (ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;
- (iii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and
- (iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(C) *LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.*

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

(B) The activities and transactions prohibited by subparagraph (A) include—

- (i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

- (III) the disadvantaged owners will maintain control of daily business operations.
- (C) The Administrator may waive the requirements of subparagraph (A) if—
- (i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and
 - (ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.
- (D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.
- (E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.
- (b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—
- (1)(A) to provide—
 - (i) technical, managerial, and informational aids to small business concerns—
 - (I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;
 - (II) by cooperating and advising with—
 - (aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and
 - (bb) other Federal and State agencies;
 - (III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and
 - (IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and
 - (ii) through cooperation with a profit-making concern (referred to in this paragraph as a “cosponsor”), training, information, and education to small business concerns, except that the Administration shall—
 - (I) take such actions as it determines to be appropriate to ensure that—
 - (aa) the Administration receives appropriate recognition and publicity;

(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

(dd) utilization of any one cosponsor in a marketing area is minimized; and

(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

(bb) the terms and conditions of the cooperation shall be specified;

(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of section 8(b)(1)(A) of this Act. To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related

material and services as the Administration deems appropriate, including clerical and stenographic service:

(i) such volunteers, while carrying out activities under section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee:

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to section 8(b)(1) of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall provide, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or Administrative proceedings arising directly out of the performance of activities pursuant to section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988, the Administration is authorized 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; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperative with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, pre-

clude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) if a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, United States Code (the Walsh-Healey Public Contracts Act), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) in any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a

fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5, United States Code, to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of 1949) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38, United States Code), veterans, and members of a reserve component of the Armed Forces.

(c)

(d)(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for

subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

(C) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in

the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(D) The term “small business concern owned and controlled by women” shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

(ii) whose management and daily business operations are controlled by one or more women.

(E) The term “small business concern owned and controlled by veterans” shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(G) In this contract, the term “qualified HUBZone small business concern” has the meaning given that term in section 3(p) of the Small Business Act.

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities, the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provisions of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of

the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) acknowledge receipt of their subcontractors' reports;

(v) compare the performance of their subcontractors to subcontracting plans and goals; and

(vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan;

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;

(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in

accordance with subparagraph (D) of this paragraph, including—

- (i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and
 - (ii) efforts to identify and award subcontracts to such small business concerns; and
- (H) a representation that the offeror or bidder will—
- (i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and
 - (ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).
- (7) The head of the contracting agency shall ensure that—
- (A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and
 - (B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.
- (8) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.
- (9) The failure of any contractor or subcontractor to comply in good faith with—
- (A) the clause contained in paragraph (3) of this subsection, or
 - (B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract,
- shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.
- (10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.
- (11) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—
- (A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the pilot Mentor-Protege Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2301 note) shall be granted credit for such assistance in accordance with subsection (g) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term “covered contract” means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

(E) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend

the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SUBCONTRACTORS.—

(A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor shall receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more executive agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.

(B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).

(e)(1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basis ordering agreement, or similar arrangement,

shall publish a notice described in subsection (f);

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting

office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and

(C) an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

- (A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and
- (B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;
- (3) the name, business address, and telephone number of the contracting officer;
- (4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;
- (5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and
- (6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold—
 - (A) a description of the procedures to be used in awarding the contract; and
 - (B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.
- (g)(1) A notice is not required under subsection (e)(1) if—
 - (A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—
 - (i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and
 - (ii) permitting the public to respond to the solicitation electronically.
 - (B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;
 - (C) the proposed procurement would result from acceptance of—
 - (i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or
 - (ii) a proposal submitted under section 9 of this Act;
 - (D) the procurement is made against an order placed under a requirements contract;
 - (E) the procurement is made for perishable subsistence supplies;
 - (F) the procurement is for utility services, other than telecommunication services, and only one source is available; or
 - (G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any fore-

seable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), and (7) of section 2304(c) of title 10, United States Code.

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h)(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

(B) all other requirements applicable to the use of such procedures under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et sq.) or chapter 137 of title 10, United States Code, as appropriate, have been satisfied.

(2) The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10, United States Code, shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate.

(i) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) For purposes of this section, the term “executive agency” has the meaning provided such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES.—

(1) IN GENERAL.—Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

(2) CONTENT OF NOTICE.—The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

(B) the due date for receipt of offers.

(l) MANAGEMENT ASSISTANCE FOR SMALL BUSINESSES AFFECTED BY MILITARY OPERATIONS.—The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict (as defined in section 7(n)(1)).

(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CONTRACTING OFFICER.—The term “contracting officer” has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term “small business concern owned and controlled by women” has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

(D) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(E) each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) ENFORCEMENT; PENALTIES.—

(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(E)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(E).

(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(E).

(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18, United States Code; and

(ii) sections 3729 through 3733 of title 31, United States Code.

(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(7) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS OWNED AND

CONTROLLED BY WOMEN.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(8) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry that has received a waiver under paragraph (3) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(n) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under para-

graph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

* * * * *

SEC. 15. (a) To effectuate the purposes of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business

prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

(b) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694(b)), the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c)(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46).

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

(C) The term "handicapped individual" has the same meaning given such term in section 3(f).

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47).

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, sub-

contractors, and suppliers, and each such Federal department or agency shall—

(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) MARKET RESEARCH.—

(A) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) FACTORS.—For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- (i) Cost savings.
- (ii) Quality improvements.
- (iii) Reduction in acquisition cycle times.
- (iv) Better terms and conditions.
- (v) Any other benefits.

(C) REDUCTION OF COSTS NOT DETERMINATIVE.—The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

[(3) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

[(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

[(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

[(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

[(4) CONTRACT TEAMING.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the per-

formance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.】

(3) *STRATEGY SPECIFICATIONS.*—*If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include following information:*

(A) *The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.*

(B) *An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.*

(C) *An assessment of—*

(i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

(ii) the specific actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4) *CONTRACT TEAMING.*—

(A) *IN GENERAL.*—*In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern may submit an offer that provides for use of a particular team of subcontractors or a joint venture of small business concerns for the performance of the contract.*

(B) *EVALUATION OF OFFERS.*—*The head of the agency shall evaluate the offer of a team or a joint venture of small business concerns in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:*

(i) *TEAMS.*—*When evaluating an offer of a small business prime contractor whose offer includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the team.*

(ii) *JOINT VENTURES.*—*When evaluating an offer of a joint venture of small business concerns, if the joint venture does not have sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the*

capabilities and past performance of each member of the joint venture as the capabilities past performance of the joint venture.

(C) STATUS AS A SMALL BUSINESS CONCERN.—Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern with respect to the performance of a contract described in subparagraph (A).

(g)

(1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(B) ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy

shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(D) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(E) The head of each Federal agency, in attempting to attain expanded participation under subparagraph (D), shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(h) REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

(1) AGENCY REPORTS.—At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year;

(C) any justifications for a failure to achieve such goals; and

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

(A) a copy of each report submitted to the Administrator under paragraph (1);

(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

- (i) small business concerns—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns; and
 - (IV) through unrestricted competition;
- (ii) small business concerns owned and controlled by service-disabled veterans—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans; and
 - (V) through unrestricted competition;
- (iii) qualified HUBZone small business concerns—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to qualified HUBZone small business concerns;
 - (V) through unrestricted competition where a price evaluation preference was used; and
 - (VI) through unrestricted competition where a price evaluation preference was not used;
- (iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
 - (V) through unrestricted competition; and
 - (VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;
- (v) small business concerns owned by an Indian tribe (as such term is defined in section 8(a)(13)) other than an Alaska Native Corporation—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
 - (V) through unrestricted competition;

(vi) small business concerns owned by a Native Hawaiian Organization—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(V) through unrestricted competition;

(vii) small business concerns owned by an Alaska Native Corporation—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(V) through unrestricted competition; and

(viii) small business concerns owned and controlled by women—

(I) in the aggregate;

(II) through competitions restricted to small business concerns;

(III) through competitions restricted using the authority under section 8(m)(2);

(IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used;

(V) through sole source contracts awarded using the authority under subsection 8(m)(7);

(VI) through sole source contracts awarded using the authority under section 8(m)(8);

(VII) by industry for contracts described in subclause (III), (IV), (V), or (VI); and

(VIII) through unrestricted competition; and

(F) for the Federal Government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), or otherwise available as provided in paragraph (3).

(3) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than \$2,500 but not greater than \$100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 8 of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) There is hereby established in each Federal agency having procurement powers an office to be known as the “Office of Small and Disadvantaged Business Utilization”. The management of each such office shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 8, 15 or 44 of this Act. Such officer or employee—

(1) shall be known as the “Director of Small and Disadvantaged Business Utilization” for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5, United States Code), except that, for any agency in which the positions of Chief Ac-

quisition Officer and senior procurement executive (as such terms are defined under section 44(a) of this Act) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary's designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 8 and 15 of this Act which relate to such agency;

(5) shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31, United States Code, or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation;

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act,

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), section 8(a) of this Act, or section 2323 of title 10, United States Code, which shall be made with

due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 44 of this Act;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this Act, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection; and

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year; and

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year.

This subsection shall not apply to the Administration.

(1) **PROCUREMENT CENTER REPRESENTATIVES.**—

(1) **ASSIGNMENT AND ROLE.**—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) **ACTIVITIES.**—A procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appro-

priate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this Act;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified; and

(I) carry out any other responsibility assigned by the Administrator.

(3) APPEALS.—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

(5) POSITION REQUIREMENTS.—

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii) have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, [except that any person serving in such a position on the date of enactment of this clause may continue to serve in that position for a period of 5 years without the required certification.] *except that—*

(I) any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years beginning on such date without the required certification; and

(II) any person hired for such position after January 3, 2013, may have up to one calendar year from the date of employment to obtain the required certification.

(B) COMPENSATION.—The Administrator shall establish personnel positions for procurement center representatives assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term “major procurement center” means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) TRAINING.—

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(m)(1) Each agency subject to the requirements of section 2323 of title 10, United States Code, shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 2323 of title 10, United States Code.

(n) For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(p) ACCESS TO DATA.—

(1) BUNDLED CONTRACT DEFINED.—In this subsection, the term “bundled contract” has the meaning given such term in section 3(o)(1).

(2) DATABASE.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) ANALYSIS.—For each bundled contract that is to be re-competed as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) ANNUAL REPORT ON CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

(B) CONTENTS.—Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

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

(dd) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q) REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—

(1) TEAMING AND JOINT VENTURE REQUIREMENTS.—**[Each Federal agency]**

(A) *IN GENERAL.*—*Each Federal agency* shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a

provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(B) *TEAMS.*—When evaluating an offer of a small business prime contractor whose offer includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the offeror.

(C) *JOINT VENTURES.*—When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not have sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(D) *USE OF SMALL BUSINESS TEAMS OR JOINT VENTURES.*—

(i) *IN GENERAL.*—For contracts awarded under section 8(a), 8(m), 15(a), 15(j), 31, or 36 to a small business team or a joint venture of small business concerns, the contracting officer shall certify annually to the Administration, for each year the contract is in effect, that each small business concern member of such team or joint venture has the same status of a small business concern, small business concern owned and controlled by service-disabled veterans, qualified HUBZone small business concern, small business concern owned and controlled by socially and economically disadvantaged individuals, or small business concern owned and controlled by women, as applicable, that such concern had at the time the contract was awarded.

(ii) *EXCEPTION.*—The requirements of clause (i) shall not apply to a contract awarded to a joint venture of small business concerns that is a protegee under a mentor-protege program approved pursuant to section 45.

(2) *POLICIES ON REDUCTION OF CONTRACT BUNDLING.*—

(A) *IN GENERAL.*—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) *RATIONALE FOR CONTRACT BUNDLING.*—Not later than 30 days after the date on which the head of a Federal

agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) REPORTING.—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator 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 regarding procurement center representatives and commercial market representatives, which shall—

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) MULTIPLE AWARD CONTRACTS.—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(s) DATA QUALITY IMPROVEMENT PLAN.—

(1) IN GENERAL.—Not later than October 1, 2015, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundled or consolidated contracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41, United States Code).

(2) PLAN REQUIREMENTS.—The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Admin-

istrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4);

(B) recommend changes to policies and procedures, including training procedures of relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;

(C) recommend requirements for periodic and statistically valid data verification and validation; and

(D) recommend clear data verification responsibilities.

(3) **PLAN SUBMISSION.**—The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4) **IMPLEMENTATION.**—*Not later than the first day of fiscal year 2017, the Administrator of the Small Business Administration shall implement the plan described in this subsection.*

(5) **CERTIFICATION.**—*The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate certification of the accuracy and completeness of data reported on bundled and consolidated contracts.*

[(4)] (6) DEFINITIONS.—In this subsection, the following definitions apply:

(A) **CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.**—The terms “Chief Acquisition Officer” and “senior procurement executive” have the meanings given such terms in section 44(a) of this Act.

(B) **BUNDLED OR CONSOLIDATED CONTRACT.**—The term “bundled or consolidated contract” means a bundled contract (as defined in section 3(o)) or a contract resulting from the consolidation of contracting requirements (as defined in section 44(a)(2)).

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SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.

(a) **DEFINITIONS.**—In this section—

(1) the term “Chief Acquisition Officer” means the employee of a Federal agency appointed or designated as the Chief Acquisition Officer for the Federal agency under section 1702(a) of title 41, United States Code;

(2) the term “consolidation of contract requirements”, with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract—

(A) to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate

contracts lower in cost than the total cost of the contract for which the offers are solicited; or

(B) to satisfy requirements of the Federal agency for construction projects to be performed at 2 or more discrete sites; and

(3) the term “senior procurement executive” means an official designated under section 1702(c) of title 41, United States Code as the senior procurement executive for a Federal agency.

(b) POLICY.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

(c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—

(1) IN GENERAL.—[Subject to paragraph (4), the head] *The head* of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than \$2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

(A) conducts market research;

(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

(E) ensures that steps will be taken to include small business concerns in the acquisition strategy.

(2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.—

(A) IN GENERAL.—A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

(C) NOTICE.—*Not later than 7 days after making a determination that an acquisition strategy involving a consolidation of contract requirements is necessary and justified under subparagraph (A), the senior procurement executive*

or Chief Acquisition Officer shall publish a notice on a public website that such determination has been made. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the senior procurement executive or Chief Acquisition Officer shall publish a justification for the determination, which shall include the information in subparagraphs (A) through (E) of paragraph (1).

(3) **BENEFITS TO BE CONSIDERED.**—The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

- (A) quality;
- (B) acquisition cycle;
- (C) terms and conditions; and
- (D) any other benefit.

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SEC. 46. LIMITATIONS ON SUBCONTRACTING.

(a) **IN GENERAL.**—If awarded a contract under section 8(a), 8(m), 15(a), 31, or 36, a covered small business concern—

(1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;

(2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, paid to the concern under the contract;

(3) in the case of a contract described in paragraphs (1) and (2)—

(A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;

(B) shall determine the amount awarded under the contract for that category of services or supplies; and

(C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and

(4) in the case of a contract **【for supplies from a regular dealer in such supplies】** *which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction*, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(b) SIMILARLY SITUATED ENTITIES.—Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) MODIFICATIONS OF PERCENTAGES.—The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) OTHER CONTRACTS.—

(1) IN GENERAL.—With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) UNIFORMITY.—A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) CONSTRUCTION PROJECTS.—The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED SMALL BUSINESS CONCERN.—The term “covered small business concern” means a business concern that—

(A) with respect to a contract awarded under section 8(a), is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 8(m)—

(i) is a small business concern owned and controlled by women (as defined in that section); or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 15(a), is a small business concern;

(D) with respect to a contract awarded under section 31, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 36, is a small business concern owned and controlled by service-disabled veterans.

(2) SIMILARLY SITUATED ENTITY.—The term “similarly situated entity” means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 8(a), is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 8(m)), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 8(m)) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

SEC. 47. LIMITATIONS ON REVERSE AUCTIONS.

(a) *PROHIBITION ON USING REVERSE AUCTIONS FOR COVERED CONTRACTS.*—*In the case of a covered contract described in subsection (c), reverse auction methods may not be used if the award of the contract is to be made under—*

- (1) *section 8(a);*
- (2) *section 8(m);*
- (3) *section 15(a);*
- (4) *section 15(j);*
- (5) *section 31; or*
- (6) *section 36.*

(b) *LIMITATIONS ON USING REVERSE AUCTIONS.*—*In the case of the award of a contract to be made under paragraphs (1) through (6) of subsection (a) that is not a covered contract, reverse auction methods may be used pursuant to the following requirements:*

(1) *DECISIONS REGARDING USE OF A REVERSE AUCTION.*—*A contracting officer shall make the following decisions, which may not be delegated to any person except for another contracting officer who meets the training requirements of paragraph (2):*

(A) *A decision to use reverse auction methods as part of the competition for award of a contract.*

(B) *Any decision made after the decision described in subsection (A) regarding the appropriate evaluation criteria, the inclusion of vendors, the acceptability of vendor submissions (including decisions regarding timeliness), and the selection of the winner.*

(2) *TRAINING REQUIRED.*—*Only a contracting officer who has received training on the appropriate use and supervision of reverse auction methods of contracting may supervise or use such methods in a procurement for a contract. The training shall be provided by, or similar to the training provided by, the Defense Acquisition University as described in section 824 of the Carl*

Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291).

(3) *NUMBER OF OFFERS; REVISIONS TO BIDS.*—A Federal agency may not award a contract using a reverse auction method if only one offer is received or if offerors do not have the ability to submit revised bids with lower prices throughout the course of the auction.

(4) *TECHNICALLY ACCEPTABLE OFFERS.*—A Federal agency awarding a contract using a reverse auction method shall evaluate the technical acceptability of offers only as technically acceptable or unacceptable.

(5) *USE OF PRICE RANKINGS.*—A Federal agency may not award a contract using a reverse auction method if at any time during the award process the Federal agency misinforms an offeror about the price ranking of the offeror’s last offer submitted in relation to offers submitted by other offerors.

(6) *USE OF THIRD-PARTY AGENTS.*—If a Federal agency uses a third party agent to assist with the award of contracts using a reverse auction method, the Federal agency shall ensure that—

(A) inherently governmental functions (as such term is used in section 2303 of title 41, United States Code) are not performed by private contractors, including by the third party agent;

(B) information on the past contract performance of offerors created by the third party agent and shared with the Federal agency is collected, maintained, and shared in compliance with section 1126 of title 41, United States Code;

(C) information on whether an offeror is a responsible source (as defined in section 113 of title 41, United States Code) that is created by the third party agent and shared with the Federal agency is shared with the offeror and complies with section 8(b)(7) of this Act; and

(D) disputes between the third party agent and an offeror may not be used to justify a determination that an offeror is not a responsible source (as defined in section 113 of title 41, United States Code) or to otherwise restrict the ability of an offeror to compete for the award of a contract or task or delivery order.

(c) *DEFINITIONS.*—In this section:

(1) *CONTRACTING OFFICER.*—The term “contracting officer” has the meaning given that term in section 2101(1) of title 41, United States Code.

(2) *COVERED CONTRACT.*—The term “covered contract” means a contract—

(A) for design and construction services;

(B) for goods purchased to protect Federal employees, members of the Armed Forces, or civilians from bodily harm; or

(C) for goods or services other than those goods or services described in subparagraph (A) or (B)—

(i) to be awarded based on factors other than price and technical responsibility; or

(ii) if awarding the contract requires the contracting officer to conduct discussions with the offerors about their offer.

(3) *DESIGN AND CONSTRUCTION SERVICES.*—The term “design and construction services” means—

(A) site planning and landscape design;

(B) architectural and interior design;

(C) engineering system design;

(D) performance of construction work for facility, infrastructure, and environmental restoration projects;

(E) delivery and supply of construction materials to construction sites;

(F) construction, alteration, or repair, including painting and decorating, of public buildings and public works; and

(G) architectural and engineering services as defined in section 1102 of title 40, United States Code.

(4) *REVERSE AUCTION.*—The term “reverse auction” means, with respect to procurement by an agency, an auction between a group of offerors who compete against each other by submitting offers for a contract or task or delivery order with the ability to submit revised offers with lower prices throughout the course of the auction.

SEC. [47.] 48. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

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