

and management assistance that is not otherwise available; and

“(5) the use of this expertise in the Small Business Administration’s training delivery system would improve substantially the quantity and quality of the agency’s management assistance programs.

“(b) The purposes of this Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] are—

“(1) to improve the management by small businesses of their information technology.

“(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

“(3) to permit cooperation with profitmaking organizations in providing management assistance to small business.”

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Pub. L. 93-386, §13, Aug. 23, 1974, 88 Stat. 750, directed General Accounting Office to conduct a full-scale audit of Small Business Administration, including all field offices and to submit audit to House and Senate not later than six months from Aug. 23, 1974.

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Pub. L. 93-237, §1, Jan. 2, 1974, 87 Stat. 1023, provided in part that any additional amounts authorized by Pub. L. 93-237 [amending this section, sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142-1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section, section 636 of this title, and sections 1961 and 1969 of Title 7] which were not obligated by June 30, 1974, were no longer to be available after that date.

ADDITIONAL CAPITAL FOR REVOLVING FUND

The following acts appropriated additional capital: 1965—\$76,000,000—Pub. L. 89-309, ch. IX, Oct. 31, 1965, 79 Stat. 1151.

\$84,000,000—Pub. L. 89-309, ch. IX, Oct. 31, 1965, 79 Stat. 1151 [effective only upon enactment into law of authorizing legislation].

\$150,000,000—Pub. L. 89-164, title V, Sept. 2, 1965, 79 Stat. 641.

\$100,000,000—Pub. L. 89-16, title I, ch. IX, Apr. 30, 1965, 79 Stat. 92.

1964—\$45,000,000—Pub. L. 88-635, ch. IX, Oct. 7, 1964, 78 Stat. 1032.

1963—\$90,000,000—Pub. L. 88-245, title V, Dec. 30, 1963, 77 Stat. 798.

1962—\$300,000,000—Pub. L. 87-843, title V, Oct. 18, 1962, 76 Stat. 1102.

\$40,000,000—Pub. L. 87-545, title I, July 25, 1962, 76 Stat. 213.

1961—\$160,000,000—Pub. L. 87-332, Sept. 30, 1961, 75 Stat. 742.

\$20,000,000—Pub. L. 87-125, title IV, Aug. 3, 1961, 75 Stat. 281.

1960—\$50,000,000—Pub. L. 86-451, title III, May 13, 1960, 74 Stat. 102.

1959—\$150,000,000—Pub. L. 86-88, title III, July 13, 1959, 73 Stat. 209.

1958—\$200,000,000—Pub. L. 85-766, ch. II, Aug. 27, 1958, 72 Stat. 867.

\$20,000,000—Pub. L. 85-457, June 13, 1958, 72 Stat. 186.

1957—\$100,000,000—Pub. L. 85-170, ch. II, Aug. 28, 1957, 71 Stat. 428.

\$45,000,000—Pub. L. 85-19, ch. I, Apr. 20, 1957, 71 Stat. 16.

1956—\$50,000,000—Act June 20, 1956, ch. 415, title III, 70 Stat. 325.

BUSINESS LOAN AND INVESTMENT FUND; INCREASE IN FINANCING FUNCTIONS; MONTHLY REPORTS TO CONGRESS

Pub. L. 91-151, title III, Dec. 23, 1969, 83 Stat. 378, provided that: “The Small Business Administration shall

promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) [subsec. (c)(1)(B) of this section] by \$70,000,000 above the level prevailing at the time of enactment of this Act [Dec. 23, 1969]. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section.”

TRANSFER OF FUNDS FOR TRADE ADJUSTMENT LOANS

Pub. L. 89-409, §3(b), May 2, 1966, 80 Stat. 133, provided in part that any unexpended balances of appropriations heretofore appropriated for the purposes of such section [former section 637a of this title] were transferred to the business loan and investment fund established by section 4(c)(1) of the Small Business Act [subsec. (c)(1) of this section].

Such transfer of funds as effective July 1, 1966, see section 3(c) of Pub. L. 89-409, set out as Effective Date of 1966 Amendment note under section 636 of this title.

§ 633a. Detailed justification for proposed changes in budget requests

Beginning in fiscal year 2013 and each fiscal year thereafter, the budget request for the Small Business Administration shall provide a detailed justification of any proposed changes from the enacted level by individual appropriation. The detailed justification shall include at a minimum a description of each credit and non-credit program including amount of funding and costs by appropriation account and fiscal year. For activities funded in multiple appropriations, the budget justification shall specify the amount included in each enacted appropriation, the amount proposed in the budget year and a justification for any proposed changes.

(Pub. L. 112-74, div. C, title V, §532, Dec. 23, 2011, 125 Stat. 923.)

CODIFICATION

Section was enacted as part of the Financial Services and General Government Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Small Business Act which comprises this chapter.

§ 634. General powers

(a) Seal; appointment and compensation of personnel; use of other services and facilities

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

(b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 6101 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed \$1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title;

(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;

(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter: *Provided*, That with respect to deferred participation loans, including loans guaranteed under paragraph (15) or (35) of section 636(a) of this title, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title;

(10) upon purchase by the Administration of any deferred participation entered into under section 636 of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of

witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

(12) impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees—

(A) not to exceed \$100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) not to exceed \$300 for loan assumptions;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq.] for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts; and

(14) require any lender authorized to make loans under section 636 of this title to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

**(c) Procurement of experts and consultants; compensation and expenses**

To such extent as he finds necessary to carry out the provisions of this chapter, the Adminis-

trator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 6101 of title 41. Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

**(d) Safety deposit box rentals**

Section 3324(a) and (b) of title 31 shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

**(e) Undertaking or suspension of payment obligation; period; extension of maturity; repayment agreement; "required payments" defined**

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if—

(A) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become insolvent or remain insolvent;

(B) with the undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become or remain a viable small business entity; and

(C) the small business concern executes an agreement in writing satisfactory to the Administration as provided by paragraph (4).

(3) Notwithstanding the provisions of sections 636(a)(4)(C) and 636(i)(1) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

(4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes

sought to be achieved herein, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

- (i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or
- (ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or
- (iii) by a combination of the payments described in clause (i) and clause (ii).

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(5) The term “required payments” with respect to any loan means payments of principal and interest under the loan.

**(f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market**

(1) The guaranteed portion of any loan made pursuant to this chapter may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

(A) prior to the Administration’s approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

(C) each loan, except each loan made under section 636(a)(14) of this title, shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market

operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 636(a) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 636(a)(6)(C) of this title or subsection (e) of this section.

**(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation; division of loan guarantees**

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, or under section 696 of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any

such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided*, That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).<sup>1</sup>

(B) The Administration is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 636(a)(23) of this title. The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(6) If the amount of the guaranteed portion of any loan under section 636(a) of this title is more than \$500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, in order to permit the maximum amount of any loan in a pool to be not more than \$500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.

**(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration**

(1) Upon the adoption of final rules and regulations, the Administration shall—

(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Adminis-

tration determines to be necessary to fully protect the interest of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this chapter and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term “seller” does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(2) The agent described in paragraph (1)(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer such funds to the Administration or to the holders of the trust certificates, as appropriate.

(3) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

**(i) Office of Hearings and Appeals**

**(1) Establishment**

**(A) Office**

There is established in the Administration an Office of Hearings and Appeals—

(i) to impartially decide matters relating to program decisions of the Administrator—

(I) for which Congress requires a hearing on the record; or

(II) that the Administrator designates for hearing by regulation; and

(ii) which shall contain the office of the Administration that handles requests submitted pursuant to sections 552 of title 5 (commonly referred to as the “Freedom of Information Act”) and maintains records pursuant to section 552a of title 5 (commonly referred to as the “Privacy Act of 1974”).

**(B) Jurisdiction**

**(i) In general**

Except as provided in clause (ii), the Office of Hearings and Appeals shall hear appeals of agency actions under or pursuant to this chapter, the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), and title 13 of the Code of Federal Regulations, and shall hear such other matters as the Administrator may determine appropriate.

**(ii) Exception**

The Office of Hearings and Appeals shall not adjudicate disputes that require a hearing on the record, except disputes per-

<sup>1</sup> See References in Text note below.

taining to the small business programs described in this chapter.

**(C) Associate Administrator**

The head of the Office of Hearings and Appeals shall be the Chief Hearing Officer appointed under section 633(b)(1) of this title, who shall be responsible to the Administrator.

**(2) Chief Hearing Officer duties**

**(A) In general**

The Chief Hearing Officer shall—

(i) be a career appointee in the Senior Executive Service and an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia; and

(ii) be responsible for the operation and management of the Office of Hearings and Appeals.

**(B) Alternative dispute resolution**

The Chief Hearing Officer may assign a matter for mediation or other means of alternative dispute resolution.

**(3) Hearing officers**

**(A) In general**

The Office of Hearings and Appeals shall appoint Hearing Officers to carry out the duties described in paragraph (1)(A)(i).

**(B) Conditions of employment**

A Hearing Officer appointed under this paragraph—

(i) shall serve in the excepted service as an employee of the Administration under section 2103 of title 5 and under the supervision of the Chief Hearing Officer;

(ii) shall be classified at a position to which section 5376 of title 5 applies; and

(iii) shall be compensated at a rate not exceeding the maximum rate payable under such section.

**(C) Authority; powers**

Notwithstanding section 556(b) of title 5—

(i) a Hearing Officer may hear cases arising under section 554 of such title;

(ii) a Hearing Officer shall have the powers described in section 556(c) of such title; and

(iii) the relevant provisions of subchapter II of chapter 5 of such title (except for section 556(b) of such title) shall apply to such Hearing Officer.

**(D) Treatment of current personnel**

An individual serving as a Judge in the Office of Hearings and Appeals (as that position and office are designated in section 134.101 of title 13, Code of Federal Regulations) on the effective date of this subsection shall be considered as qualified to be, and redesignated as, a Hearing Officer.

**(4) Hearing Officer defined**

In this subsection, the term “Hearing Officer” means an individual appointed or redesignated under this subsection who is an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia.

(Pub. L. 85-536, §2[5], July 18, 1958, 72 Stat. 385; Pub. L. 87-305, §4, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87-367, title I, §103(3), Oct. 4, 1961, 75 Stat. 787; Pub. L. 92-310, title II, §224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93-386, §§3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub. L. 94-305, title II, §208, June 4, 1976, 90 Stat. 671; Pub. L. 95-89, title III, §303, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-510, §103, Oct. 24, 1978, 92 Stat. 1781; Pub. L. 96-302, title I, §114, July 2, 1980, 94 Stat. 838; Pub. L. 98-352, §2, July 10, 1984, 98 Stat. 329; Pub. L. 100-590, title I, §113, Nov. 3, 1988, 102 Stat. 2997; Pub. L. 102-140, title VI, §609(a), Oct. 28, 1991, 105 Stat. 825; Pub. L. 102-564, title III, §307(d), Oct. 28, 1992, 106 Stat. 4264; Pub. L. 103-81, §3(a), Aug. 13, 1993, 107 Stat. 780; Pub. L. 103-282, §2, July 22, 1994, 108 Stat. 1422; Pub. L. 103-403, title VI, §602, Oct. 22, 1994, 108 Stat. 4202; Pub. L. 104-36, §4(b), Oct. 12, 1995, 109 Stat. 297; Pub. L. 104-208, div. D, title I, §103(e), title II, §§205(a), 208(i)(1), Sept. 30, 1996, 110 Stat. 3009-727, 3009-738, 3009-747; Pub. L. 106-554, §1(a)(9) [title II, §209], Dec. 21, 2000, 114 Stat. 2763, 2763A-683; Pub. L. 108-306, §3, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108-447, div. K, title I, §131, Dec. 8, 2004, 118 Stat. 3452; Pub. L. 111-240, title I, §1117, Sept. 27, 2010, 124 Stat. 2509; Pub. L. 114-92, div. A, title VIII, §869(a)(1), Nov. 25, 2015, 129 Stat. 936; Pub. L. 114-328, div. A, title XVIII, §1833(a), Dec. 23, 2016, 130 Stat. 2661; Pub. L. 115-232, div. A, title VIII, §862(b)(2), Aug. 13, 2018, 132 Stat. 1898.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subssecs. (b)(12)(C), (D) and (i)(1)(B)(i), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title III of the Act is classified generally to subchapter III (§681 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Subsection (h)(2) of this section, referred to in subsec. (g)(4)(A), was redesignated subsec. (h)(1)(B) by Pub. L. 104-208, div. D, title II, §205(a)(1), (2), Sept. 30, 1996, 110 Stat. 3009-738.

The effective date of this subsection, referred to in subsec. (i)(3)(D), probably means the date of enactment of Pub. L. 114-92, which added subsec. (i) and which was approved Nov. 25, 2015.

CODIFICATION

In subsec. (b)(4), “Section 6101 of title 41” substituted for “Section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(8), “subchapter I of chapter 57 of title 5” substituted for “the Travel Expense Act of 1949” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (c), “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d), “Section 3324(a) and (b) of title 31” substituted for “Section 3648 of the Revised Statutes (31 U.S.C. 529)” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Prior similar provisions were contained in section 205 of act July 30, 1953, ch. 282, title II, 67 Stat. 234, as

amended by act Aug. 9, 1955, ch. 628, § 4, 69 Stat. 547, which was classified to this section. See Codification note set out under section 631 of this title.

#### AMENDMENTS

2018—Subsec. (b)(7). Pub. L. 115-232 inserted “, including loans guaranteed under paragraph (15) or (35) of section 636(a) of this title” after “deferred participation loans”.

2016—Subsec. (i)(1)(B). Pub. L. 114-328 amended subpar. (B) generally. Prior to amendment, text read as follows: “The Office of Hearings and Appeals shall only hear appeals of matters as described in this chapter, the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), and title 13 of the Code of Federal Regulations.”

2015—Subsec. (i). Pub. L. 114-92 added subsec. (i).

2010—Subsec. (g)(6). Pub. L. 111-240 added par. (6).

2004—Subsec. (b)(14). Pub. L. 108-447 added par. (14).

Subsec. (g)(4)(C). Pub. L. 108-306, § 3(1), added subpar. (C).

Subsec. (h)(2), (3). Pub. L. 108-306, § 3(2), added par. (2) and redesignated former par. (2) as (3).

2000—Subsec. (f)(1)(C). Pub. L. 106-554 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “each loan shall have been fully disbursed to the borrower prior to any sale.”

1996—Subsec. (b)(7). Pub. L. 104-208, § 208(i)(1), substituted “: *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation” for “: *Provided*, That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and creditworthiness, and loan monitoring, collection and liquidation”.

Subsec. (f)(3). Pub. L. 104-208, § 103(e), inserted at end “Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.”

Subsec. (h). Pub. L. 104-208, § 205(a), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted “(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;” for “(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender’s servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;”, and added par. (2).

1995—Subsec. (g)(4)(A). Pub. L. 104-36 substituted first sentence for former first sentence which read as follows: “The Administration may collect the following

fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than  $\frac{1}{10}$  of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration.”; and substituted “such fee” for “such fees” in two places in second sentence.

1994—Subsec. (b)(8). Pub. L. 103-282 inserted “: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities” before semicolon at end.

Subsec. (b)(12), (13). Pub. L. 103-403 added pars. (12) and (13).

1993—Subsec. (g)(4). Pub. L. 103-81 added par. (4) and struck out former par. (4) which read as follows: “The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.”

1992—Subsec. (f)(4). Pub. L. 102-564 substituted “section 636(a)(6)(C) of this title or subsection (e) of this section” for “subsection (e) of this section or section 636(a)(6) or 636(a)(8) of this title”.

1991—Subsec. (g)(1). Pub. L. 102-140 substituted “or under section 696 of this title” for “except separate trust certificates shall be issued for loans approved under section 636(a)(13) of this title”.

1988—Subsec. (g)(1). Pub. L. 100-590 substituted “except separate trust certificates shall be issued for loans approved” for “except those”.

1984—Subsecs. (f) to (h). Pub. L. 98-352 added subsecs. (f) to (h).

1980—Subsec. (b)(7). Pub. L. 96-302 prohibited an interpretation that authorized the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but sanctioned, with respect to deferred participation loans, authority for participating lending institutions to take action on behalf of the Administrator determining eligibility and creditworthiness, loan monitoring, collection, and liquidation, etc.

1978—Subsec. (c). Pub. L. 95-510 substituted “Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5” for “Any individual so employed may be compensated at a rate not in excess of \$50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses”.

1977—Subsec. (e). Pub. L. 95-89 added subsec. (e).

1976—Subsec. (e). Pub. L. 94-305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974—Subsec. (b)(10), (11). Pub. L. 93-386, § 3(1), added pars. (10) and (11).

Subsec. (e). Pub. L. 93-386, § 10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92-310 struck out provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961—Subsec. (a). Pub. L. 87-367 struck out authorization for fifteen additional positions in grades 16, 17, and

18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub. L. 87-305 added subsec. (d).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 103 and 205 of Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

Pub. L. 104-208, div. D, title II, §208(j), Sept. 30, 1996, 110 Stat. 3009-747, provided that: "This section [amending this section, sections 80a-18, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, and 697f of this title, and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under sections 681 and 683 of this title, and amending provisions set out as a note under section 631 of this title] and the amendments made by this section shall become effective on the date of enactment of this Act [Sept. 30, 1996]."

#### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-36, §8, Oct. 12, 1995, 109 Stat. 297, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1995 Amendment note set out under section 631 of this title] do not apply with respect to any loan made or guaranteed under the Small Business Act [15 U.S.C. 631 et seq.] or the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] before the date of enactment of this Act [Oct. 12, 1995].

"(b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act [Oct. 12, 1995], if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act."

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-81, §3(b), Aug. 13, 1993, 107 Stat. 781, provided that: "Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) [amending this section] shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act [subsec. (f) of this section] after August 31, 1993."

Pub. L. 103-81, §7, Aug. 13, 1993, 107 Stat. 782, which provided that sections 3 and 5 of Pub. L. 103-81, amending this section and section 636 of this title and enacting provisions set out as notes under this section and section 636 of this title, were repealed on Sept. 30, 1996, was repealed by Pub. L. 104-208, div. D, title I, §109(a), Sept. 30, 1996, 110 Stat. 3009-733, effective Sept. 29, 1996.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-510, §105, Oct. 24, 1978, 92 Stat. 1782, provided that: "This Act [amending this section and sections 636 and 637 of this title and repealing sections 5031, 5032, and 5083 of Title 42, The Public Health and Welfare] shall be effective October 1, 1979."

#### REGULATIONS

Pub. L. 98-352, §3, July 10, 1984, 98 Stat. 331, provided that:

"(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act [15 U.S.C. 634(h)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

"(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] other than as provided for in subsection (a).

"(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective."

#### ASSET SALES

Pub. L. 105-135, title V, §505, Dec. 2, 1997, 111 Stat. 2624, provided that: "In connection with the Administration's implementation of a program to sell to the private sector loans and other assets held by the Administration, the Administration shall provide to the Committees a copy of the draft and final plans describing the sale and the anticipated benefits resulting from such sale."

#### PREFERRED LENDER STANDARD REVIEW PROGRAM

Pub. L. 104-208, div. D, title I, §103(h), Sept. 30, 1996, 110 Stat. 3009-728, provided that: "Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administrator shall commence a standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), which shall include annual or more frequent assessments of the participation of the lender in the program, including defaults, loans, and recoveries of loans made by that lender under the authority of this section. The Administrator shall require such standard review for each new entrant to the Preferred Lender Program."

#### STUDY AND REPORT REGARDING 1993 AMENDMENTS TO IMPOSE SECONDARY MARKET FEES AND TO REDUCE LOAN GUARANTEE PERCENTAGES

Pub. L. 103-81, §6, Aug. 13, 1993, 107 Stat. 782, provided that: "The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [amending this section and section 636 of this title] on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness, viability and growth of the secondary market authorized by section 5(f) of the Small Business Act [subsec. (f) of this section]. Not later than 16 months after the date of enactment [Aug. 13, 1993], and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term 'small business concerns owned and controlled by minorities', includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act [15 U.S.C. 637(d)(3)(C)]."

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General



Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### VIABILITY OF SECONDARY MARKETS

Pub. L. 102-366, title II, §226, Sept. 4, 1992, 106 Stat. 1001, provided that: "The Administrator of the Small Business Administration is authorized and directed to take such actions in the awarding of contracts as is deemed necessary to assure the continued long-term viability of the secondary markets in loans, debentures or other securities guaranteed by the Administration."

#### SMALL BUSINESS LOAN SECONDARY MARKET STUDY

Pub. L. 102-366, title III, §311, Sept. 4, 1992, 106 Stat. 1005, directed Secretary of the Treasury, Director of Congressional Budget Office, and Chairman of Securities and Exchange Commission, in consultation with Administrator of Small Business Administration, to conduct a study of potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses, specified considerations to be included in the study, and required that, not later than 1 year after Sept. 4, 1992, a report be submitted to Congress on results of the study, including recommendations for legislation to facilitate development of a secondary market for loans to small businesses.

#### APPROPRIATIONS NOT AUTHORIZED

Pub. L. 98-352, §6, July 10, 1984, 98 Stat. 332, provided that: "This Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] does not authorize the appropriation of any funds."

#### SMALL BUSINESS PROTECTION

Pub. L. 90-104, title III, §§301-303, Oct. 11, 1967, 81 Stat. 272, authorized Administrator of Small Business Administration to conduct a special study of impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, and report to President and to Congress results of study, including such recommendations he deemed appropriate for administrative and legislative action, within one year after Oct. 11, 1967.

#### § 634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy

There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(Pub. L. 94-305, title II, §201, June 4, 1976, 90 Stat. 668.)

#### CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

#### § 634b. Primary functions of Office of Advocacy

The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and

entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

(2) assess the effectiveness of existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;

(3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses;

(4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses to realize their potential for contributing to the improvement of the Nation's economic well-being;

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

(6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and for assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business and industry to assist minority enterprises;

(8) make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises;

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete<sup>1</sup> effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

(10) determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop such criteria, if appropriate;

(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5; and

(12) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by serviced-disabled<sup>2</sup> veterans, as defined in such section 632(q) of this title, and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to pro-

<sup>1</sup> So in original. Probably should be "compete".

<sup>2</sup> So in original.