

109TH CONGRESS
2D SESSION

S. 2594

To amend the Small Business Act to reauthorize the loan guarantee program under section 7(a) of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. KERRY (for himself, Mr. PRYOR, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to reauthorize the loan guarantee program under section 7(a) of that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “7(a) Loan Program Reauthorization Act of 2006”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) According to a recent study by the United
8 States Chamber of Commerce and Business Loan
9 Express, availability of financing remains 1 of the

1 top obstacles to the start-up and growth of small
2 businesses in the United States, particularly for mi-
3 norities who are still more likely to use credit cards
4 to finance their businesses and fear denial from
5 lenders.

6 (2) In pursuing its mission of aiding small busi-
7 nesses, the Small Business Administration (referred
8 to in this Act as the “Administration”) helps small
9 businesses access capital by guaranteeing loans and
10 venture capital offered through partnerships with
11 private-sector lenders and investors.

12 (3) The loan guaranty program under section
13 7(a) of the Small Business Act is the largest loan
14 program of the Administration, and it is intended to
15 serve small business borrowers who could not other-
16 wise obtain long-term credit under suitable terms
17 and conditions from the private sector without a
18 guarantee from the Administration.

19 (4) Loans under section 7(a) of the Small Busi-
20 ness Act have terms of up to 25 years, allowing
21 small businesses to reduce their monthly payments
22 and maximize their cash flow.

23 (5) Loan proceeds can be used for most busi-
24 ness purposes, including working capital, equipment,

1 furniture and fixtures, land and buildings, leasehold
2 improvements, and debt refinancing.

3 (6) In helping qualified small businesses to ob-
4 tain the long-term loans they need for start-up and
5 expansion, loans under section 7(a) of the Small
6 Business Act create and retain jobs and promote
7 economic development in communities throughout
8 the United States.

9 (7) In fiscal year 2005, almost 96,000 small
10 businesses were approved for loans under section
11 7(a) of the Small Business Act, injecting more than
12 \$15,000,000,000 of capital into local communities
13 throughout the United States, and creating or re-
14 taining an estimated 460,000 jobs.

15 (c) PURPOSES.—The purpose and intent of this Act
16 are—

17 (1) to reauthorize the loan program under sec-
18 tion 7(a) of the Small Business Act for 3 years, with
19 appropriate funding levels to adequately address the
20 capital needs of small businesses in the United
21 States;

22 (2) to provide small businesses that need fi-
23 nancing for fixed assets through the loan program
24 under title V of the Small Business Investment Act
25 of 1958, and for working capital and equipment fi-

1 nancing through the loan program under section
2 7(a) of the Small Business Act, the option of uti-
3 lizing both loan guaranty programs to their max-
4 imum amount;

5 (3) to increase the proportion of small business
6 loans to minorities and women, addressing concerns
7 that African Americans, Hispanics, Asians and
8 women have been receiving far fewer small business
9 loans relative to their share of the population and
10 that there has been no statistically significant im-
11 provement since fiscal year 2001;

12 (4) to establish a National Preferred Lenders
13 Program for qualified lenders who would like to op-
14 erate in other States, streamlining and making uni-
15 form the application and approval process;

16 (5) to ensure that lenders who operate nation-
17 ally are qualified by creating eligibility criteria and
18 standards; and

19 (6) to ensure that lenders who fail to meet the
20 approved eligibility criteria of the National Preferred
21 Lenders Program are held accountable to the com-
22 munities they serve.

1 **SEC. 2. REAUTHORIZATION AND MAXIMUM AMOUNTS.**

2 (a) 7(a) AUTHORIZATION FOR FISCAL YEARS 2007
3 THROUGH 2009.—Section 20 of the Small Business Act
4 (15 U.S.C. 631 note) is amended—

5 (1) by redesignating subsection (j) as sub-
6 section (f); and

7 (2) by adding at the end the following:

8 “(g) FISCAL YEAR 2007.—For fiscal year 2007, for
9 the program authorized under section 7(a), the Adminis-
10 trator is authorized to make \$18,500,000,000 in general
11 business loans, and there are authorized to be appro-
12 priated to the Administrator such sums as may be nec-
13 essary to carry out such program.

14 “(h) FISCAL YEAR 2008.—For fiscal year 2008, for
15 the program authorized under section 7(a), the Adminis-
16 trator is authorized to make \$19,500,000,000 in general
17 business loans, and there are authorized to be appro-
18 priated to the Administrator such sums as may be nec-
19 essary to carry out such program.

20 “(i) FISCAL YEAR 2009.—For fiscal year 2009, for
21 the program authorized under section 7(a), the Adminis-
22 trator is authorized to make \$20,500,000,000 in general
23 business loans, and there are authorized to be appro-
24 priated to the Administrator such sums as may be nec-
25 essary to carry out such program.”.

1 (b) MAXIMUM AMOUNT AND COORDINATION OF SBA
2 LOANS.—

3 (1) IN GENERAL.—Section 7(a)(3)(A) of the
4 Small Business Act (15 U.S.C. 636(a)(3)(A)) is
5 amended by striking “would exceed \$1,500,000 (or
6 if the gross loan amount would exceed \$2,000,000)”
7 and inserting “(excluding any amounts outstanding
8 or committed under title V of the Small Business In-
9 vestment Act of 1958) would exceed \$2,250,000 (or
10 if the gross loan amount would exceed \$3,000,000)”.

11 (2) REPORTING.—Not later than 90 days after
12 the date of enactment of this Act, and annually
13 thereafter, the Administrator shall submit a report
14 to Congress that—

15 (A) includes the number of small business
16 concerns (as that term is defined in section 3
17 of the Small Business Act (15 U.S.C. 632))
18 that have financings under both section 7(a) of
19 the Small Business Act (15 U.S.C. 636(a)) and
20 title V of the Small Business Investment Act of
21 1958 (15 U.S.C. 695 et seq.) during the pre-
22 ceding year; and

23 (B) describes the total amount and general
24 performance of the financings described in sub-
25 paragraph (A).

1 **SEC. 3. FEES.**

2 Section 7(a)(23) of the Small Business Act (15
3 U.S.C. 636(a)(23)) is amended by striking subparagraph
4 (C) and inserting the following:

5 “(C) LOWERING OF FEES.—

6 “(i) IN GENERAL.—If the fees paid by
7 all small business borrowers and by lenders
8 for guarantees under this subsection, or
9 the sum of such fees plus any amount ap-
10 propriated to carry out this subsection, as
11 applicable, is more than the amount nec-
12 essary to equal the cost to the Administra-
13 tion of making such guarantees, the Ad-
14 ministrator shall reduce fees paid by small
15 business borrowers and lenders under
16 clauses (i) through (iv) of paragraph
17 (18)(A) and subparagraph (A) of this
18 paragraph.

19 “(ii) MAXIMUM.—The fees paid by
20 small business borrowers and lenders for
21 guarantees under this subsection may not
22 be increased above the maximum level au-
23 thorized under the amendments made by
24 division K of the Consolidated Appropria-
25 tions Act, 2005 (Public Law 108–447; 118
26 Stat. 3441).”.

1 **SEC. 4. ALTERNATIVE SIZE STANDARD.**

2 Section 3(a) of the Small Business Act (15 U.S.C.
3 632(a)) is amended by adding at the end the following:

4 “(4) OPTIONAL SIZE STANDARD.—

5 “(A) IN GENERAL.—The Administrator shall
6 establish, by rule, an optional size standard for busi-
7 ness loan applicants under section 7(a) and develop-
8 ment company loan applicants under title V of the
9 Small Business Investment Act of 1958, which uti-
10 lizes maximum tangible net worth and average net
11 income as an alternative to the use of industry
12 standards.

13 “(B) INTERIM RULE.—Until the date on which
14 the optional size standards established under sub-
15 paragraph (A) are in effect, the alternative size
16 standard in section 121.301(b) of title 13, Code of
17 Federal Regulations, or any successor thereto shall
18 apply to business loan applicants under section 7(a)
19 and development company loan applicants under
20 title V of the Small Business Investment Act of
21 1958.”.

22 **SEC. 5. MINORITY SMALL BUSINESS DEVELOPMENT.**

23 (a) IN GENERAL.—The Small Business Act (15
24 U.S.C. 631 et seq.) is amended—

25 (1) by redesignating section 37 as section 38;
26 and

1 (2) by inserting after section 36 the following:

2 **“SEC. 37. MINORITY SMALL BUSINESS DEVELOPMENT.**

3 “(a) OFFICE OF MINORITY SMALL BUSINESS DE-
4 VELOPMENT.—There is established in the Administration
5 an Office of Minority Small Business Development, which
6 shall be administered by the Associate Administrator for
7 Minority Small Business Development (in this section re-
8 ferred to as the ‘Associate Administrator’) appointed
9 under section 4(b)(1).

10 “(b) ASSOCIATE ADMINISTRATOR FOR MINORITY
11 SMALL BUSINESS DEVELOPMENT.—The Associate Ad-
12 ministrator—

13 “(1) shall be either—

14 “(A) an appointee in the Senior Executive
15 Service who is a career appointee; or

16 “(B) an employee in the competitive serv-
17 ice.

18 “(2) shall be responsible for the formulation,
19 execution, and promotion of policies and programs of
20 the Administration that provide assistance to small
21 business concerns owned and controlled by minori-
22 ties;

23 “(3) shall act as an ombudsman for full consid-
24 eration of minorities in all programs of the Adminis-
25 tration (including those under section 7(j) and 8(a));

1 “(4) shall work with the Associate Deputy Ad-
2 ministrators for Capital Access to increase the pro-
3 portion of loans and loan dollars, and investments
4 and investment dollars, going to minorities through
5 the finance programs under this Act and the Small
6 Business Investment Act of 1958 (including sub-
7 sections (a), (b), and (m) of section 7 of this Act
8 and the programs under part A and B of title III
9 and title V of the Small Business Investment Act of
10 1958);

11 “(5) shall work with the Associate Deputy Ad-
12 ministrators for Entrepreneurial Development to in-
13 crease the proportion of counseling and training that
14 goes to minorities through the entrepreneurial devel-
15 opment programs of the Administration;

16 “(6) shall work with the Associate Deputy Ad-
17 ministrators for Government Contracting and Minor-
18 ity Enterprise Development to increase the propor-
19 tion of contracts, including through the Small Busi-
20 ness Innovation Research Program and the Small
21 Business Technology Transfer Program, to minori-
22 ties;

23 “(7) shall work with the partners of the Admin-
24 istration, trade associations, and business groups to
25 identify and carry out policies and procedures to

1 more effectively market the resources of the Admin-
2 istration to minorities;

3 “(8) shall work with the Office of Field Oper-
4 ations to ensure that district offices and regional of-
5 fices have adequate staff, funding, and other re-
6 sources to market the programs of the Administra-
7 tion to meet the objectives described in paragraphs
8 (4) through (7); and

9 “(9) shall report to and be responsible directly
10 to the Administrator.

11 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to carry out this sec-
13 tion—

14 “(1) \$5,000,000 for fiscal year 2007;

15 “(2) \$5,000,000 for fiscal year 2008; and

16 “(3) \$5,000,000 for fiscal year 2009.”.

17 (b) CONFORMING AMENDMENTS.—Section 4(b)(1) of
18 the Small Business Act (15 U.S.C. 633(b)(1)) is amended
19 in sixth sentence, by striking “Minority Small Business
20 and Capital Ownership Development” and all that follows
21 through the end of the sentence and inserting “Minority
22 Small Business Development.”.

1 **SEC. 6. NATIONAL PREFERRED LENDERS PROGRAM.**

2 (a) IN GENERAL.—Section 7(a) of the Small Busi-
 3 ness Act (15 U.S.C. 636(a)) is amended by adding at the
 4 end the following:

5 “(32) NATIONAL PREFERRED LENDERS PRO-
 6 GRAM.—

7 “(A) DEFINITIONS.—In this paragraph—

8 “(i) the term ‘national preferred lend-
 9 er’ means a lender authorized by the Ad-
 10 ministrator to participate in the National
 11 Preferred Lenders Program;

12 “(ii) the term ‘National Preferred
 13 Lenders Program’ means the program es-
 14 tablished under subparagraph (B); and

15 “(iii) the term ‘Preferred Lenders
 16 Program’ has the meaning given the term
 17 in paragraph (2)(C)(ii).

18 “(B) ESTABLISHMENT OF PROGRAM.—In
 19 addition to the Preferred Lenders Program, the
 20 Administrator shall establish a National Pre-
 21 ferred Lenders Program, under which the Ad-
 22 ministrator may authorize a preferred lender to
 23 operate in any area served by a district office
 24 of the Administration.

25 “(C) ELIGIBILITY CRITERIA.—

1 “(i) IN GENERAL.—Not later than 60
2 days after the date of enactment of this
3 paragraph, the Administrator shall estab-
4 lish, by rule, eligibility criteria for national
5 preferred lenders.

6 “(ii) CONSIDERATIONS.—The eligi-
7 bility criteria established by the Adminis-
8 trator under clause (i) may include consid-
9 eration of whether the lender has—

10 “(I) satisfactorily operated as a
11 preferred lender in areas encom-
12 passing all or part of the territory in
13 not fewer than 5 district offices of the
14 Administration for a minimum of 3
15 years in each territory;

16 “(II) centralized loan approval,
17 servicing, and liquidation functions
18 and processes that are satisfactory to
19 the Administration;

20 “(III) uniform written policies
21 and procedures relating to loans
22 under this subsection, including the
23 processing of loans under the Pre-
24 ferred Lenders Program;

1 “(IV) an average rate of per-
2 formance in currency rate, default
3 rate, and recovery rate for loans made
4 under the Preferred Lenders Program
5 that is equal to or better than the na-
6 tional average rate of performance in
7 such categories for all loans under
8 this subsection; and

9 “(V) received a generally satis-
10 factory or substantially satisfactory
11 compliance review rating from the Ad-
12 ministrator in its most recent audit
13 and examination as a preferred lender
14 and a small business lending com-
15 pany, if applicable, or an in compli-
16 ance rating, as a result of a follow-up
17 review.

18 “(D) DELEGATED AUTHORITY.—

19 “(i) IN GENERAL.—The Administrator
20 shall authorize a national preferred lender
21 to take certain action relating to the serv-
22 icing of loans on behalf of the Adminis-
23 trator under section 5(b)(7), including au-
24 thorizing the lender—

1 “(I) to make and close a loan
2 guaranteed by the Administrator,
3 without obtaining the prior specific
4 approval of the Administrator; and

5 “(II) to service and liquidate a
6 loan, without obtaining the prior spe-
7 cific approval of the Administrator for
8 routine servicing and liquidation ac-
9 tivities.

10 “(ii) LIMITATION.—In exercising any
11 authority delegated under clause (i), a na-
12 tional preferred lender may not take any
13 action that creates an actual or apparent
14 conflict of interest.

15 “(E) CORRECTIVE ACTION.—If a national
16 preferred lender fails to continue to meet the
17 eligibility criteria established under subpara-
18 graph (C)(i), the Administrator shall notify the
19 lender of the deficiency and allow a reasonable
20 period of time for the lender to correct the defi-
21 ciency.

22 “(F) SUSPENSION OR REVOCATION.—

23 “(i) IN GENERAL.—The Administrator
24 shall suspend or revoke the authorization
25 of a national preferred lender to partici-

1 pate in the National Preferred Lenders
 2 Program, if the Administrator determines
 3 that the lender—

4 “(I) is not adhering to the rules
 5 and regulations of the Administration
 6 applicable to such lender; or

7 “(II) after the date on which a
 8 period of time for correction of defi-
 9 ciencies under subparagraph (F) ex-
 10 pires, has failed to meet the eligibility
 11 criteria established under subpara-
 12 graph (C)(i).

13 “(ii) OUTSTANDING GUARANTEES.—
 14 Any suspension or revocation under clause
 15 (i) shall not affect any guarantee in effect
 16 on the date of such suspension or revoca-
 17 tion.”.

18 (b) CONFORMING AMENDMENT.—Section 7(a)(2)(C)
 19 of the Small Business Act (15 U.S.C. 636(a)(2)(C)) is
 20 amended—

21 (1) in the subparagraph heading, by inserting
 22 “AND NATIONAL PREFERRED LENDERS PROGRAM”
 23 before the period at the end; and

- 1 (2) by inserting “or the National Preferred
- 2 Lenders Program under paragraph (32)” after
- 3 “Preferred Lenders Program”.

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