

Public Law 104-36
104th Congress

An Act

To amend the Small Business Act and the Small Business Investment Act of 1958 to reduce the cost to the Federal Government of guaranteeing certain loans and debentures, and for other purposes.

Oct. 12, 1995

[S. 895]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business

Lending

Enhancement

Act of 1995.

15 USC 631 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Lending Enhancement Act of 1995”.

SEC. 2. REDUCED LEVEL OF PARTICIPATION IN GUARANTEED LOANS.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended to read as follows:

“(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), 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 \$100,000; or

“(ii) 80 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 \$100,000.

“(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) 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) authority to service and liquidate such loans.”.

SEC. 3. GUARANTEE FEES.

(a) AMOUNT OF FEES.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended to read as follows:

“(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, in an amount equal to the sum of—

“(i) 3 percent of the amount of the deferred participation share of the loan that is less than or equal to \$250,000;

“(ii) if the deferred participation share of the loan exceeds \$250,000, 3.5 percent of the difference between—

“(I) \$500,000 or the total deferred participation share of the loan, whichever is less; and

“(II) \$250,000; and

“(iii) if the deferred participation share of the loan exceeds \$500,000, 3.875 percent of the difference between—

“(I) the total deferred participation share of the loan; and

“(II) \$500,000.

“(B) EXCEPTION FOR CERTAIN LOANS.—Notwithstanding subparagraph (A), if the total deferred participation share of a loan guaranteed under this subsection is less than or equal to \$80,000, the guarantee fee collected under subparagraph (A) shall be in an amount equal to 2 percent of the total deferred participation share of the loan.”.

(b) REPEAL OF PROVISIONS ALLOWING RETENTION OF FEES BY LENDERS.—Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19)) is amended—

(1) in subparagraph (B)—

(A) by striking “shall (i) develop” and inserting “shall develop”; and

(B) by striking “, and (ii)” and all that follows through the end of the subparagraph and inserting a period; and

(2) by striking subparagraph (C).

SEC. 4. ESTABLISHMENT OF ANNUAL FEE.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

“(23) ANNUAL FEE.—

“(A) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

Regulations.

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

(b) CONFORMING AMENDMENT.—Section 5(g)(4)(A) of the Small Business Act (15 U.S.C. 634(g)(4)(A)) is amended—

(1) by striking the first sentence and inserting the following: “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.”; and

(2) by striking “fees” each place such term appears and inserting “fee”.

SEC. 5. NOTIFICATION REQUIREMENT.

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

“(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.”.

SEC. 6. DEVELOPMENT COMPANY DEBENTURES.

Section 503(b) of the Small Business Investment Act of 1958 (15 U.S.C. 697(b)) is amended—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “; and”; and

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

“(7) with respect to each loan made from the proceeds of such debenture, the Administration—

“(A) assesses and collects a fee, which shall be payable by the borrower, in an amount equal to 0.125 percent per year of the outstanding balance of the loan; and

“(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).”.

SEC. 7. PILOT PREFERRED SURETY BOND GUARANTEE PROGRAM EXTENSION.

Section 207 of the Small Business Administration Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is amended by striking “September 30, 1995” and inserting “September 30, 1997”.

SEC. 8. APPLICABILITY.

15 USC 634 note.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act do not apply with respect to any

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.

(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, if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.

Approved October 12, 1995.

LEGISLATIVE HISTORY—S. 895 (H.R. 2150):

HOUSE REPORTS: Nos. 104-239 accompanying H.R. 2150 (Comm. on Small Business) and 104-269 (Comm. of Conference).

SENATE REPORTS: No. 104-129 (Comm. on Small Business).

CONGRESSIONAL RECORD, Vol. 141 (1995):

Aug. 11, considered and passed Senate.

Sept. 12, H.R. 2150 considered and passed House; S. 895, amended, passed in lieu.

Sept. 28, Senate agreed to conference report.

Sept. 29, House agreed to conference report.