

Acts, provide grants to intermediary organizations (referred to in section 2343(b)(1) of this title) throughout the United States pursuant to agreements with such intermediary organizations. Each such agreement shall require the intermediary organization to provide benefits to firms certified under section 2341 of this title. The Secretary shall, to the maximum extent practicable, provide by October 1, 2010, that contracts entered into with intermediary organizations be for a 12-month period and that all such contracts have the same beginning date and the same ending date.

“(b) DISTRIBUTION OF FUNDS.—

“(1) IN GENERAL.—Not later than 90 days after February 17, 2009, the Secretary shall develop a methodology for the distribution of funds among the intermediary organizations described in subsection (a).

“(2) PROMPT INITIAL DISTRIBUTION.—The methodology described in paragraph (1) shall ensure the prompt initial distribution of funds and establish additional criteria governing the apportionment and distribution of the remainder of such funds among the intermediary organizations.

“(3) CRITERIA.—The methodology described in paragraph (1) shall include criteria based on the data in the annual report on the trade adjustment assistance for firms program described in section 2356 of this title.

“(c) REQUIREMENTS FOR CONTRACTS.—An agreement with an intermediary organization described in subsection (a) shall require the intermediary organization to contract for the supply of services to carry out grants under this part in accordance with terms and conditions that are consistent with guidelines established by the Secretary.

“(d) CONSULTATIONS.—

“(1) CONSULTATIONS REGARDING METHODOLOGY.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

“(A) not less than 30 days before finalizing the methodology described in subsection (b); and

“(B) not less than 60 days before adopting any changes to such methodology.

“(2) CONSULTATIONS REGARDING GUIDELINES.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 60 days before finalizing the guidelines described in subsection (c) or adopting any subsequent changes to such guidelines.”

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-272 added subsec. (d).

1981—Subsec. (c). Pub. L. 97-35 substituted provisions relating to limitation on direct loans on the basis of interest rates on loans under section 636(a) of title 15 for provisions relating to limitation on direct loans on the basis of interest rates under section 2345(b) of this title.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97-35, set out as a note under section 2343 of this title.

TERMINATION DATE

Except as otherwise provided, technical assistance and grants may not be provided under this part after June 30, 2022, see section 285 of Pub. L. 93-618, as modified by section 406(a)(7) of Pub. L. 114-27, set out as notes preceding section 2271 of this title.

RESIDUAL AUTHORITY

Pub. L. 111-5, div. B, title I, §1864(b), Feb. 17, 2009, 123 Stat. 398, provided that: “The Secretary of Commerce shall have the authority to modify, terminate, resolve,

liquidate, or take any other action with respect to a loan, guarantee, contract, or any other financial assistance that was extended under section 254, 255, 256, or 257 of the Trade Act of 1974 (19 U.S.C. 2344, 2345, 2346, and 2347), as in effect on the day before the effective date set forth in section 1891 [set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title].”

**§ 2345. Conditions for financial assistance**

**(a) Unavailability of firm’s resources; reasonable assurance of repayment**

No financial assistance shall be provided under this part unless the Secretary determines—

(1) that the funds required are not available from the firm’s own resources; and

(2) that there is reasonable assurance of repayment of the loan.

**(b) Interest rates**

(1) The rate of interest on direct loans made under this part shall be—

(A) a 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 of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this part if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions, and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of title 26.

**(c) Maturity of loans**

The Secretary shall make no loan or guarantee of a loan under section 2344(b)(1) of this title having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 2344(b)(2) of this title having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

**(d) Priority for small firms; servicing of loans**

(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the mean-

ing of the Small Business Act [15 U.S.C. 631 et seq.] (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this part, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

**(e) Loan guarantee conditions**

The following conditions apply with respect to any loan guaranteed under this part:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

**(f) Operating reserves**

The Secretary shall maintain operating reserves with respect to anticipated claims under guarantees made under this part. Such reserves shall be considered to constitute obligations for purposes of sections 1108(c) and (d), 1501, and 1502(a) of title 31.

**(g) Fees to lenders which make loan guarantees**

The Secretary may charge a fee to a lender which makes a loan guaranteed under this part in such amount as is necessary to cover the cost of administration of such guarantee.

**(h) Maximum aggregate amount of outstanding guaranteed or direct loans**

(1) The aggregate amount of loans made to any firm which are guaranteed under this part and which are outstanding at any time shall not exceed \$3,000,000.

(2) The aggregate amount of direct loans made to any firm under this part which are outstanding at any time shall not exceed \$1,000,000.

**(i) Preference for firms having employee stock ownership plans**

(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 2341 of this title, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation.

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless

the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligation to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of title 26 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to

such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) “employee stock ownership plan” means a plan described in section 4975(e)(7) of title 26,

(B) “qualified trust” means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] and section 401 of title 26,

(C) “qualified employer securities” means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) “equity capital” means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

(Pub. L. 93-618, title II, § 255, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97-35, title XXV, § 2523, Aug. 13, 1981, 95 Stat. 891; Pub. L. 98-120, § 4(a), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

#### TERMINATION OF ASSISTANCE

*For termination of assistance under this part after June 30, 2022, see Termination Date note below.*

#### Editorial Notes

##### REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (d)(1), is Pub. L. 85-536, § 2 (1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (i)(5)(B), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

##### CODIFICATION

Section reflects the July 1, 2021, reversion to provisions in effect on Jan. 1, 2014. See Effective and Termination Dates note below.

In subsec. (f), “sections 1108(c) and (d), 1501, and 1502(a) of title 31” substituted for “section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200)” 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

A prior section 2345, Pub. L. 93-618, title II, § 255, as added Pub. L. 111-5, div. B, title I, § 1864(a)(3), Feb. 17, 2009, 123 Stat. 398; amended Pub. L. 111-344, title I,

§ 101(c)(4), Dec. 29, 2010, 124 Stat. 3613; as added and amended Pub. L. 112-40, title II, §§ 201(b), (c), 221(b), Oct. 21, 2011, 125 Stat. 403, 410; as added and amended Pub. L. 114-27, title IV, §§ 402(b), (c), 403(d)(2), June 29, 2015, 129 Stat. 374, ceased to be effective after the reversion, effective July 1, 2021, of this section to provisions in effect on Jan. 1, 2014, pursuant to section 406 of Pub. L. 114-27, set out as a note preceding section 2271 of this title. Prior to reversion, section 2345 read as follows:

#### “§ 2345. Authorization of appropriations

“(a) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out the provisions of this part \$16,000,000 for each of the fiscal years 2015 through 2021. Amounts appropriated pursuant to this subsection shall remain available until expended.

“(b) PERSONNEL.—Of the amounts appropriated pursuant to this section for each fiscal year, \$350,000 shall be available for full-time positions in the Department of Commerce to administer the provisions of this part. Of such funds the Secretary shall make available to the Economic Development Administration such sums as may be necessary to establish the position of Director of Adjustment Assistance for Firms and such other full-time positions as may be appropriate to administer the provisions of this part.”

#### AMENDMENTS

1986—Subsecs. (b)(2)(B), (i)(3)(E), (5)(A), (B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1983—Subsec. (i). Pub. L. 98-120 added subsec. (i).

1981—Subsec. (b). Pub. L. 97-35, § 2523(1), amended subsec. (b) generally, substituting provisions limiting the maximum rate of interest on loans guaranteed under this part on the basis of comparison with other Federally guarantee loans for provisions limiting the maximum interest rate on the basis of 15 U.S.C. 636(a) and inserting provisions prohibiting the guarantee of loans if the interest is tax exempt.

Subsec. (c). Pub. L. 97-35, § 2523(2)(A), (B), inserted references to section 2344 of this title, alternative limitation of useful life of asset, and prohibition of guarantees in excess of 10 years in introductory provisions.

Subsec. (c)(2). Pub. L. 97-35, § 2523(2)(C), inserted “or servicing” after “liquidation”.

Subsec. (d). Pub. L. 97-35, § 2523(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97-35, § 2523(4), substituted provisions respecting conditions applicable to loan guarantees for provisions relating to percentage maximum on loan guarantees which are covered in par. (1).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-120, § 4(b), Oct. 12, 1983, 97 Stat. 812, provided that: “The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 12, 1983].”

##### Effective Date of 1981 Amendment

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97-35, set out as a note under section 2343 of this title.

##### TERMINATION DATE

Except as otherwise provided, technical assistance and grants may not be provided under this part after June 30, 2022, see section 285 of Pub. L. 93-618, as modified by section 406(a)(7) of Pub. L. 114-27, set out as notes preceding section 2271 of this title.

**§ 2345a. Omitted****Editorial Notes**

## CODIFICATION

Section, Pub. L. 93-618, title II, § 255A, as added Pub. L. 112-40, title II, § 221(a)(1), Oct. 21, 2011, 125 Stat. 409, and Pub. L. 114-27, title IV, § 402(b), (c), June 29, 2015, 129 Stat. 374, was omitted in view of the reversion of this part, effective July 1, 2021, to provisions in effect on Jan. 1, 2014, by section 406 of Pub. L. 114-27, set out as a note preceding section 2271 of this title. Prior to omission, section 2345a read as follows:

**“§ 2345a. Annual report on trade adjustment assistance for firms**

“(a) IN GENERAL.—Not later than December 15, 2012, and annually thereafter, the Secretary shall prepare a report containing data regarding the trade adjustment assistance for firms program under this part for the preceding fiscal year. The data shall include the following:

“(1) The number of firms that inquired about the program.

“(2) The number of petitions filed under section 2341 of this title.

“(3) The number of petitions certified and denied by the Secretary.

“(4) The average time for processing petitions after the petitions are filed.

“(5) The number of petitions filed and firms certified for each congressional district of the United States.

“(6) Of the number of petitions filed, the number of firms that entered the program and received benefits.

“(7) The number of firms that received assistance in preparing their petitions.

“(8) The number of firms that received assistance developing business recovery plans.

“(9) The number of business recovery plans approved and denied by the Secretary.

“(10) The average duration of benefits received under the program nationally and in each region served by an intermediary organization referred to in section 2343(b)(1) of this title.

“(11) Sales, employment, and productivity at each firm participating in the program at the time of certification.

“(12) Sales, employment, and productivity at each firm upon completion of the program and each year for the 2-year period following completion of the program.

“(13) The number of firms in operation as of the date of the report and the number of firms that ceased operations after completing the program and in each year during the 2-year period following completion of the program.

“(14) The financial assistance received by each firm participating in the program.

“(15) The financial contribution made by each firm participating in the program.

“(16) The types of technical assistance included in the business recovery plans of firms participating in the program.

“(17) The number of firms leaving the program before completing the project or projects in their business recovery plans and the reason the project or projects were not completed.

“(18) The total amount expended by all intermediary organizations referred to in section 2343(b)(1) of this title and by each such organization to administer the program.

“(19) The total amount expended by intermediary organizations to provide technical assistance to firms under the program nationally and in each region served by such an organization.

“(b) CLASSIFICATION OF DATA.—To the extent possible, in collecting and reporting the data described in subsection (a), the Secretary shall classify the data by intermediary organization, State, and national totals.

“(c) REPORT TO CONGRESS; PUBLICATION.—The Secretary shall—

“(1) submit the report described in subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives; and

“(2) publish the report in the Federal Register and on the website of the Department of Commerce.

“(d) PROTECTION OF CONFIDENTIAL INFORMATION.—

“(1) IN GENERAL.—The Secretary may not release information described in subsection (a) that the Secretary considers to be confidential business information unless the person submitting the confidential business information had notice, at the time of submission, that such information would be released by the Secretary, or such person subsequently consents to the release of the information.

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the Secretary from providing information the Secretary considers to be confidential business information under paragraph (1) to a court in camera or to another party under a protective order issued by a court.”

**§ 2346. Delegation of functions to Small Business Administration; authorization of appropriations****(a) Delegation of functions as to eligibility certification**

In the case of any firm which is small (within the meaning of the Small Business Act [15 U.S.C. 631 et seq.] and regulations promulgated thereunder), the Secretary may delegate all of his functions under this part (other than the functions under sections 2341 and 2342(d)<sup>1</sup> of this title with respect to the certification of eligibility and section 2354 of this title) to the Administrator of the Small Business Administration.

**(b) Authorization of appropriations**

There are authorized to be appropriated to the Secretary \$16,000,000 for each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007,<sup>2</sup> to carry out the Secretary's functions under this part in connection with furnishing adjustment assistance to firms. Amounts appropriated under this subsection shall remain available until expended.

**(c) Transfer of unexpended appropriations**

The unexpended balances of appropriations authorized by section 1912(d)<sup>1</sup> of this title are transferred to the Secretary to carry out his functions under this part.

(Pub. L. 93-618, title II, § 256, Jan. 3, 1975, 88 Stat. 2032; Pub. L. 97-35, title XXV, § 2524, Aug. 13, 1981, 95 Stat. 892; Pub. L. 99-272, title XIII, § 13008(b), Apr. 7, 1986, 100 Stat. 305; Pub. L. 100-418, title I, § 1426(b)(2), Aug. 23, 1988, 102 Stat. 1251; Pub. L. 103-66, title XIII, § 13803(a)(2), Aug. 10, 1993, 107 Stat. 668; Pub. L. 105-277, div. J, title I, § 1012(c), Oct. 21, 1998, 112 Stat. 2681-901; Pub. L. 106-113, div. B, § 1000(a)(5) [title VII, § 702(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-319; Pub. L. 107-210, div. A, title I, §§ 111(b), 131, Aug. 6, 2002, 116 Stat. 936, 946; Pub. L. 108-429, title II, § 2004(a)(3), Dec. 3, 2004, 118 Stat. 2589; Pub. L. 110-89, § 1(b), Sept. 28, 2007, 121 Stat. 982.)

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

<sup>2</sup> See Application of Subsection (b) note below.