

## DIVISION K—SMALL BUSINESS

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This division may be cited as the “Small Business Reauthorization and Manufacturing Assistance Act of 2004”.

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

#### TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Sec. 1. Short title; table of contents.

##### Subtitle A—Small manufacturers assistance

Sec. 101. Express loans.

Sec. 102. Loan guarantee fees.

Sec. 103. Increase in guarantee amount and institution of associated fee.

Sec. 104. Debenture size.

Sec. 105. Job requirements.

Sec. 106. Report regarding national database of small manufacturers.

Sec. 107. International trade.

##### Subtitle B—Authorizations

#### CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL REAUTHORIZATIONS

Sec. 121. Program authorization levels. Sec. 122. Additional reauthorizations.

#### CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATIONS AND SUNDRY AMENDMENTS

Sec. 123. Paul D. Coverdell drug-free workplace program authorization provisions.

Sec. 124. Grant provisions.

Sec. 125. Drug-free communities coalitions as eligible intermediaries.

Sec. 126. Promotion of effective practices of eligible intermediaries.

Sec. 127. Report to Congress.

##### Subtitle C—Administration Management

Sec. 131. Lender examination and review fees. Sec. 132. Gifts and co-sponsorship of events.

##### Subtitle D—Entrepreneurial development programs

#### CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT

Sec. 141. Service Corps of Retired Executives.

Sec. 142. Small business development center program.

CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT

- Sec. 143. Advisory Committee on Veterans Business Affairs.
- Sec. 144. Outreach grants for veterans.
- Sec. 145. Authorization of appropriations.
- Sec. 146. National Veterans Business Development Corporation.

CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

- Sec. 147. Small Business Manufacturing Task Force.

Subtitle E—HUBZone Program

- Sec. 151. Streamlining and revision of HUBZone eligibility requirements.
- Sec. 152. Expansion of qualified areas.
- Sec. 153. Price evaluation preference.
- Sec. 154. HUBZone Authorizations.
- Sec. 155. Participation in federally funded projects.

Subtitle F—Small business lending companies

- Sec. 161. Supervisory and enforcement authority for small business lending companies. Sec. 162. Definitions relating to small business lending companies.

TITLE II—MISCELLANEOUS AMENDMENTS

- Sec. 201. Amendment to definition of equity capital with respect to issuers of participating securities. Sec. 202. Investment of excess funds.
- Sec. 203. Surety bond amendments. Sec. 204. Effective date for certain fees.

## TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

### Subtitle A—Small Manufacturers Assistance

#### SEC. 101. EXPRESS LOANS.

- (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:“(31) EXPRESS LOANS.—“(A) DEFINITIONS.—As used in this paragraph:
  - “(i) The term ‘express lender’ means any lender authorized by the Administration to participate in the Express Loan Program.
  - “(ii) The term ‘express loan’ means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.
  - “(iii) The term ‘Express Loan Program’ means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.“(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.
- “(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the

Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

“(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000.

“(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

**SEC. 102. LOAN GUARANTEE FEES.**

(a) ADDITIONAL GUARANTEE FEE LEVEL.—Section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)) is amended to read as follows:

“(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

“(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

“(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

“(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

“(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.”.

(b) CLERICAL AMENDMENT.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by striking subparagraph (C).

(c) YEARLY FEE.—Section 7(a)(23) of the Small Business Act (15 U.S.C. 636(a)(23)) is amended—

(1) in the heading, by striking “ANNUAL” and inserting “YEARLY”;

(2) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration’s annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term ‘cost’

has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).”;

(3) in subparagraph (B), by striking “annual” and inserting “yearly”; and

(4) by adding at the end the following:

“(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

“(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses

(i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

“(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.”.

**SEC. 103. INCREASE IN GUARANTEE AMOUNT AND INSTITUTION OF ASSOCIATED FEE.**

(a) INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—Section 7(a)(3)(A) of the Small Business Act (15

U.S.C. 636(a)(3)(A)) is amended by striking “\$1,000,000” and inserting “\$1,500,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

**SEC. 104. DEBENTURE SIZE.**

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended to read as follows: “(2) MAXIMUM AMOUNT.—

“(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

“(i) \$1,500,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

“(ii) \$2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); and

“(iii) \$4,000,000 for each project of a small manufacturer.

“(B) DEFINITION.—As used in this paragraph, the term ‘small manufacturer’ means a small business concern—

“(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

“(ii) all of the production facilities of which are located in the United States.”.

**SEC. 105. JOB REQUIREMENTS.**

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

“(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$50,000 guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.

“(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company’s portfolio of outstanding debentures creates or retains one job for every \$50,000 guaranteed by the Administration.

“(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company’s portfolio may average not more than \$75,000 per job created or retained.

“(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

“(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

“(6) As used in this subsection, the term ‘small manufacturer’ means a small business concern—

“(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

“(B) all of the production facilities of which are located in the United States.”.

**SEC. 106. REPORT REGARDING NATIONAL DATABASE OF SMALL MANUFACTURERS.**

(a) **STUDY AND REPORT.**—The Administrator, in consultation with the Association of Small Business Development Centers authorized by section 21(k) of the Small Business Act (15 U.S.C. 648(k)), shall—

(1) study the feasibility of creating a national database of small manufacturers that institutions of higher education could access for purposes of meeting procurement needs; and  
(2) not later than 1 year after the date of enactment of this Act, submit a report to the Congress regarding the findings and conclusions of such study.

(b) **COST ESTIMATE.**—The report referred to in subsection (a)(2) shall include an estimate of the cost of creating and maintaining the database described in subsection (a)(1).

(c) **DEFINITION.**—As used in this section, the term “small manufacturer” means a small business concern—

(1) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(2) all of the production facilities of which are located in the United States.

**SEC. 107. INTERNATIONAL TRADE.**

(a) **IN GENERAL.**—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended to read as follows: “(16) **INTERNATIONAL TRADE.**—

“(A) **IN GENERAL.**—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its

competitive position, the Administrator may make such loan to assist such concern in—

“(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

“(ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions.

“(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

“(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

“(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.— For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

“(i) is confronting increased competition with foreign firms in the relevant market; and

“(ii) is injured by such competition.

“(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.”.

(b) LIMITATION INCREASE.—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended—

(1) by striking “\$1,250,000” and inserting “\$1,750,000”; and

(2) by striking “\$750,000” and inserting “\$1,250,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

## Subtitle B—Authorizations

### CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL REAUTHORIZATIONS

#### SEC. 121. PROGRAM AUTHORIZATION LEVELS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (a)(1), by striking “certification” each place it appears in subparagraphs (D) and (E) and inserting “accreditation”; and

(2) by striking subsections (c) through (i) and inserting the following: “(c) DISASTER MITIGATION PILOT PROGRAM.—The following pro

gram levels are authorized for loans under section 7(b)(1)(C):

“(1) \$15,000,000 for fiscal year 2005.

“(2) \$15,000,000 for fiscal year 2006.

“(d) FISCAL YEAR 2005.—

“(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005: “(A) For the programs authorized by this Act, the Administration is authorized to make— “(i) \$75,000,000 in technical assistance grants, as provided in section 7(m); and

“(ii) \$105,000,000 in direct loans, as provided in 7(m).

“(B) For the programs authorized by this Act, the Administration is authorized to make \$23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

“(i) \$16,500,000,000 in general business loans, as provided in section 7(a);

“(ii) \$6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

“(iii) \$500,000,000 in loans, as provided in section 7(a)(21); and

“(iv) \$50,000,000 in loans, as provided in section 7(m).

“(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make— “(i) \$4,250,000,000 in purchases of participating securities; and “(ii) \$3,250,000,000 in guarantees of debentures.

“(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

“(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1). “(2) ADDITIONAL AUTHORIZATIONS.—

“(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

“(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

“(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

“(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal

department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts

of not more than \$2,000,000. “(e) FISCAL YEAR 2006.— “(1)

PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006: “(A) For the programs authorized by this Act, the Administration is authorized to make— “(i) \$80,000,000 in technical assistance grants, as provided in section 7(m); and

“(ii) \$110,000,000 in direct loans, as provided in 7(m).

“(B) For the programs authorized by this Act, the Administration is authorized to make \$25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

“(i) \$17,000,000,000 in general business loans, as provided in section 7(a);

“(ii) \$7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

“(iii) \$500,000,000 in loans, as provided in section 7(a)(21); and

“(iv) \$50,000,000 in loans, as provided in section 7(m).

“(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make— “(i) \$4,500,000,000 in purchases of participating securities; and “(ii) \$3,500,000,000 in guarantees of debentures.

“(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

“(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1). “(2) ADDITIONAL AUTHORIZATIONS.—

“(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

“(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—



“(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

“(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than \$2,000,000.”.

**SEC. 122. ADDITIONAL REAUTHORIZATIONS.**

(a) **DRUG-FREE WORKPLACE PROGRAM ASSISTANCE.**—Section 21(c)(3)(T) of the Small Business Act (15 U.S.C. 648(c)(3)(T)) is amended by striking “October 1, 2003” and inserting “October 1, 2006”.

(b) **SMALL BUSINESS DEVELOPMENT CENTERS.**—Section 21(a)(4)(C) of the Small Business Act (15 U.S.C. 648(a)(4)(C)) is amended—

(1) by striking clause (vii) and inserting the following:

“(vii) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this subparagraph—

“(I) \$130,000,000 for fiscal year 2005; and “(II) \$135,000,000 for fiscal year 2006.”;

(2) by redesignating clause (viii) as clause (ix); and

(3) by inserting after clause (vii) the following:

“(viii) **LIMITATION.**—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than \$1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed \$100,000, and shall be used for small business development center personnel expenses and related small business programs and services.”.

**CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORK  
PLACE PROGRAM AUTHORIZATIONS AND SUNDRY**

**AMENDMENTS**

**SEC. 123. PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATION  
PROVISIONS.**

(a) **IN GENERAL.**—Section 27(g)(1) of the Small Business Act (15 U.S.C. 654(g)(1)) is amended by striking “, \$5,000,000” in the first sentence and all that follows through “subsection” in the second sentence and inserting the following: “(other than subsection (b)(2)), \$5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph”.

(b) **LIMITATION ON AUTHORIZATION FOR SMALL BUSINESS DEVELOPMENT CENTERS.**—Section 27(g)(2) of the Small Business Act (15 U.S.C. 654(g)) is amended by striking “this subsection, not more than the greater of 10 percent or \$1,000,000” and inserting “paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000”.

(c) **ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.**—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)) is amended by adding at the end the following:

“(3) **ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.**—There are authorized to be appropriated to carry out subsection (b)(2), \$1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.”.

(d) **LIMITATION ON ADMINISTRATIVE COSTS.**—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)), as amended by subsection (c), is further amended by adding at the end the following:

“(4) **LIMITATION ON ADMINISTRATIVE COSTS.**—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).”.

#### **SEC. 124. GRANT PROVISIONS.**

(a) **ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.**—Section 27(b) of the Small Business Act (15 U.S.C. 654) is amended—

(1) by striking “There is established” and inserting the following:

“(1) **IN GENERAL.**—There is established”; and

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

“(2) **ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.**—In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.”.

(b) **2-YEAR GRANTS.**—Section 27(b) of the Small Business Act (15 U.S.C. 654(b)), as amended by subsection (a), is further amended by adding at the end the following:

“(3) **2-YEAR GRANTS.**—Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.”.

#### **SEC. 125. DRUG-FREE COMMUNITIES COALITIONS AS ELIGIBLE INTERMEDIARIES.**

Section 27(a)(2)(D) of the Small Business Act (15 U.S.C. 654(a)(2)) is amended to read as follows: “(D)(i) the purpose of which is—

“(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

“(II) to provide other forms of assistance and services to small business concerns; or

“(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).”.

**SEC. 126. PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.**

Section 27(c) of the Small Business Act (15 U.S.C. 654(c)) is amended to read as follows:

“(c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.—

“(1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

“(2) EVALUATION OF PROGRAM.—

“(A) DATA COLLECTION AND ANALYSIS.—Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

“(B) METHOD OF EVALUATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern’s employees and the identification of methods suitable for analyzing such information.”.

**SEC. 127. REPORT TO CONGRESS.**

Not later than March 31, 2006, the Administrator, in consultation with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall submit to Congress a report that—

- (1) analyzes the information collected under section 27(c) of the Small Business Act;
- (2) identifies trends in such information; and
- (3) evaluates the effectiveness of the drug-free workplace programs established with assistance under section 27 of the Small Business Act (15 U.S.C. 654).

## Subtitle C—Administration Management

### SEC. 131. LENDER EXAMINATION AND REVIEW FEES.

Section 5(b) of the Small Business Act (15 U.S.C. 634(b)) is amended—

(1) in paragraph (12), by striking “and” at the end;

(2) in paragraph (13), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(14) require any lender authorized to make loans under section 7 of this Act 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.”.

### SEC. 132. GIFTS AND CO-SPONSORSHIP OF EVENTS.

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

“(1) IN GENERAL.—The Administrator may, for purposes of this Act, the Small Business Investment Act of 1954, and title IV of the Women’s Business Ownership Act of 1988, solicit, accept, hold, administer, utilize, and dispose of gifts, devises, and bequests of cash, property (including tangible, intangible, real, and personal), subsistence, and services. Notwithstanding any other provision of law, the Administrator may utilize gifts, devises, or bequests for marketing and outreach activities, including the cost of promotional materials and wearing apparel.

“(2) AUDITS.—Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semi-annual audits by the Inspector General of the Administration who shall report his findings to the Congress.

“(3) CONFLICTS OF INTEREST.—No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.

“(4) ACCEPTANCE OF SERVICES AND FACILITIES FOR DISASTER LOAN PROGRAM.—The Administrator may 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 7(b). “(h) CO-SPONSORSHIP OF EVENTS.—

“(1) AUTHORIZATION.—The Administrator, after consultation with the General Counsel, may provide assistance for the benefit of small business through Administration-sponsored activities, through cosponsored activities with any eligible entity, or through such other activities that the Administrator determines to be appropriate, including recognition events.

“(2) ELIGIBLE ENTITY.—For purposes of this subsection, the term ‘eligible entity’ means any for-profit or not-for-profit entity, any Federal, State, or local government official, or any Federal, State, or local government entity.

“(3) PROHIBITION ON ENDORSEMENTS.—The Administrator shall ensure that the Administration and any eligible entities that cosponsor activities receive appropriate recognition for such cosponsorship, and that such recognition does not constitute or imply an endorsement by the Administration of any product or service of such entity.

“(4) AUTHORITY TO CHARGE FEES.—Notwithstanding any other provision of law, the Administrator may charge a participant in any activity sponsored or cosponsored by the Administration a minimal fee, and retain and use such fee to cover the costs of such activity.

“(5) LIMITED DELEGATION.—The Administrator may not delegate the authority described in this subsection except to the Deputy Administrator, an Associate Administrator, or an Assistant Administrator.

“(6) REPORT TO CONGRESS.—The Inspector General of the Administration shall report semi-annually to Congress on the Administrator’s use of authority under this subsection.

“(7) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall promulgate regulations to carry out the provisions of this subsection.”.

(b) CONFORMING AMENDMENTS.—Section 8(b)(1)(A) of the Small Business Act (15 U.S.C. 637(b)(1)(A)) is amended—

(1) by striking clause (ii);

(2) by striking “(1)(A) to provide—” and all that follows through “business concerns—” and inserting the following:

“(1)(A) to provide technical, managerial, and informational aids to small business concerns—”;

(3) by redesignating subclauses (I) through (IV) as clauses

(i) through (iv), respectively;

(4) by redesignating items (aa) and (bb) of clause (ii), as so redesignated by paragraph (3), as subclauses (I) and (II), respectively; and

(5) by striking “; and” at the end of clause (iv), as so redesignated by paragraph (3), and inserting a period.

(c) SUNSET PROVISION.—The amendments made by this section are repealed on October 1, 2006.

## **Subtitle D—Entrepreneurial Development Programs**

### **CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT**

#### **SEC. 141. SERVICE CORPS OF RETIRED EXECUTIVES.**

(a) IN GENERAL.—Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) is amended—

(1) by striking “this Act; and to”, and inserting “this Act. To”;

(2) by striking “may maintain at its headquarters” and all that follows through “That any” and inserting “shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any”; and

(3) by striking the period at the end and inserting “and the management of the contributions received.”.

(b) REGULATIONS.—The Administration shall, not later than 180 days after the date of enactment of this Act, promulgate regulations to carry out the amendments made by subsection (a).

**SEC. 142. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.**

(a) PRIVACY REQUIREMENTS.—Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended by adding at the end the following:

“(7) PRIVACY REQUIREMENTS.—

“(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

“(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

“(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit. “(B) ADMINISTRATOR USE OF INFORMATION.—This sec

tion shall not—“(i) restrict Administrator access to program activity data; or

“(ii) prevent the Administrator from using client information to conduct client surveys. “(C) REGULATIONS.—

“(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—“(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

“(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information. “(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

“(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.”.

(b) TERM CHANGE.—Section 21(k) of the Small Business Act (15 U.S.C. 648(k)) is amended—

(1) by striking “CERTIFICATION” each place it appears and inserting “ACCREDITATION”; and

(2) by striking “certification” each place it appears and inserting “accreditation”.

## CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT

### SEC. 143. ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS.

(a) RETENTION OF DUTIES.—Section 33(h) of the Small Business Act (15 U.S.C. 657c(h)) is amended by striking “October 1, 2004” and inserting “October 1, 2006”.

(b) EXTENSION OF AUTHORITY.—Section 203(h) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (15 U.S.C. 657b note) is amended by striking “September 30, 2004” and inserting “September 30, 2006”.

### SEC. 144. OUTREACH GRANTS FOR VETERANS.

Section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) is amended by inserting before the period at the end the following: “, veterans, and members of a reserve component of the Armed Forces”.

### SEC. 145. AUTHORIZATION OF APPROPRIATIONS.

Section 32 of the Small Business Act (15 U.S.C. 657b) is amended by adding at the end the following:

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$1,500,000 for fiscal year 2005; and

“(2) \$2,000,000 for fiscal year 2006.”.

### SEC. 146. NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.

Section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) is amended by adding at the end the following: “Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.”.

## CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

### SEC. 147. SMALL BUSINESS MANUFACTURING TASK FORCE.

(a) ESTABLISHMENT.—The Administrator of the Small Business Administration (referred to in this subtitle as the “Administrator”) shall establish a Small Business Manufacturing Task Force (referred to in this section as the “Task Force”) to address the concerns of small manufacturers.

(b) CHAIR.—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) DUTIES.—The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) MEETINGS.—

(1) FREQUENCY.—The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) **QUORUM.**—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) **PERSONNEL MATTERS.**—

(1) **COMPENSATION OF MEMBERS.**—Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) **DETAIL OF SBA EMPLOYEES.**—Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) **REPORT.**—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

- (1) the President;
- (2) the Committee on Small Business and Entrepreneurship of the Senate; and
- (3) the Committee on Small Business of the House of Representatives.

## Subtitle E—HUBZone Program

### **SEC. 151. STREAMLINING AND REVISION OF HUBZONE ELIGIBILITY REQUIREMENTS.**

(a) **IN GENERAL.**—Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended—

(1) in paragraph (3)—

(A) by amending subparagraph (A) to read as follows:

“(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;”

(B) in subparagraph (C), by striking “or” at the end;

(C) in subparagraph (D)(ii), by striking the period at the end and inserting “; or”; and

(D) by adding at the end the following:“(E) a small business concern that is—  
“(i) a small agricultural cooperative organized or incorporated in the United States;

“(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

“(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.”; and

(2) in paragraph (5)(A)(i)(I)(aa), by striking “or (D)” and inserting “(C), (D), or (E)”.

(b) **CONFORMING AMENDMENT.**—Section 3(j) of the Small Business Act (15 U.S.C. 632(j)) is amended by striking “of section 7(b)(2)”.

### **SEC. 152. EXPANSION OF QUALIFIED AREAS.**

(a) **TREATMENT OF CERTAIN AREAS AS HUBZONES.**—

(1) **BASE CLOSURE AREAS.**—Section 3(p)(1) of the Small Business Act (15 U.S.C. 632(p)(1)) is amended—



- (A) in subparagraph (C), by striking “or” at the end;
- (B) in subparagraph (D), by striking the period at the end and inserting “; or”; and
- (C) by adding at the end the following:“(E) base closure areas.”.

(2) HUBZONE STATUS TIME LINE AND COMMENCEMENT.— A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act for a period of 5 years.

(3) DEFINITION.—Section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) is amended by adding at the end the following:

“(D) BASE CLOSURE AREA.—The term ‘base closure area’ means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

“(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

“(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

“(iii) section 2687 of title 10, United States Code; or

“(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.”.

(b) QUALIFIED NONMETROPOLITAN COUNTY.—Section 3(p)(4)(B)(ii)(II) of the Small Business Act (15 U.S.C. 632(p)(4)(B)(ii)(II)) is amended to read as follows:

“(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.”.

(c) TEMPORARY QUALIFIED AREAS EXTENSION AND QUALIFIED AREAS STUDY.—

(1) REDESIGNATED AREA.—Section 3(p)(4)(C) of the Small Business Act (15 U.S.C. 632(p)(4)(C)) is amended by striking “only for the 3-year period following” and inserting the following: “only until the later of—

“(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

“(ii) 3 years after”.

(2) STUDY AND REPORT.—

(A) STUDY.—The Independent Office of Advocacy of the Small Business Administration shall conduct a study of the HUBZone program to measure the effectiveness of the definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified

areas for the purposes of economic impact on small business development and jobs creation.

(B) REPORT.—Not later than May 1, 2008, the Independent Office of Advocacy shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

- (i) the results of the study conducted under paragraph (1); and
- (ii) any proposed changes to the existing definitions under section 3(p)(4) of the Small Business Act (15

U.S.C. 632(p)(4)) relating to HUBZone qualified areas.

**SEC. 153. PRICE EVALUATION PREFERENCE.**

Section 31(b)(3) of the Small Business Act (15 U.S.C. 657a(b)(3)) is amended—

- (1) by redesignating subparagraph (C) as subparagraph(D); and
- (2) by adding at the end the following:

“(C) PROCUREMENT OF COMMODITIES FOR INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.”.

**SEC. 154. HUBZONE AUTHORIZATIONS.**

Section 31(d) of the Small Business Act (15 U.S.C. 657a(d)) is amended by striking “2001 through 2003” and inserting “2004 through 2006”.

**SEC. 155. PARTICIPATION IN FEDERALLY FUNDED PROJECTS.**

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

## **Subtitle F—Small Business Lending Companies**

**SEC. 161. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.**

Section 23 of the Small Business Act (15 U.S.C. 650) is amended to read as follows:

**“SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.**

- “(a) IN GENERAL.—The Administrator is authorized— “(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

“(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

“(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act. “(b) CAPITAL DIRECTIVE.—

“(1) IN GENERAL.—If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

“(2) DELEGATION.—The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

“(3) REGULATIONS.—The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

“(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

“(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

“(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

“(A) for false statements knowingly made in any written submission required under this Act;

“(B) for omission of a material fact from any written submission required under this Act;

“(C) for willful or repeated violation of this Act;

“(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

“(E) for violation of any cease and desist order of the Administrator under this section.

“(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

“(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

“(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority

of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

“(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

“(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5, United States Code, the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

“(e) CEASE AND DESIST ORDER.—

“(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

“(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

“(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

“(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

“(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

“(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United

States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

“(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

“(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court. “(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

“(1) DEFINITION.—In this section, the term ‘management official’ means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company’s or lender’s activities under section 7(a) of this Act.

“(2) REMOVAL OF MANAGEMENT OFFICIAL.—

“(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

“(i) willfully and knowingly commits a substantial violation of—

“(I) this Act;

“(II) any regulation issued under this Act;

“(III) a final cease-and-desist order under this Act; or

“(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

“(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

“(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, will be held thereon.

“(C) HEARING.—

“(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

“(I) the management official, and for good cause shown; or

“(II) the Attorney General.

“(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A). “(D) ORDER OF REMOVAL.—

“(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

“(ii) EFFECTIVENESS.—An order under clause (i) shall—

“(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

“(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a

reviewing court in accordance with this section. “(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

“(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.

“(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)— “(i) shall take effect upon service of notice under paragraph (2); and “(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

“(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

“(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

“(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2). “(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

“(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

“(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

“(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

“(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under sub section (e) or (f).

“(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

“(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

“(A) ISSUANCE OF ORDERS.—After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

“(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

“(h) APPOINTMENT OF RECEIVER.—

“(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

“(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

“(i) POSSESSION OF ASSETS.—

“(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

“(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

“(j) PENALTIES AND FORFEITURES.—

“(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than \$5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

“(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.”.



**SEC. 162. DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.**

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

“(r) **DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.**—As used in section 23 of this Act:

“(1) **SMALL BUSINESS LENDING COMPANY.**—The term ‘small business lending company’ means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

“(2) **NON-FEDERALLY REGULATED SBA LENDER.**—The term ‘non-Federally regulated SBA lender’ means a business concern if—

“(A) such concern is authorized by the Administrator to make loans under section 7;

“(B) such concern is subject to regulation by a State; and

“(C) the lending activities of such concern are not regulated by any Federal banking authority.”.

## **TITLE II—MISCELLANEOUS AMENDMENTS**

**SEC. 201. AMENDMENT TO DEFINITION OF EQUITY CAPITAL WITH RESPECT TO ISSUERS OF PARTICIPATING SECURITIES.**

Section 303(g)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683 (g)(4)) is amended—

(1) in the first sentence, by striking “subsection” and inserting “Act”; and

(2) in the second sentence, by striking “contingent upon and limited to the extent of earnings” and inserting “from appropriate sources, as determined by the Administration”.

**SEC. 202. INVESTMENT OF EXCESS FUNDS.**

Section 308(b) of the Small Business Investment Act (15 U.S.C. 687(b)) is amended by striking the last sentence and inserting the following: “Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

“(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

“(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

“(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).”.

**SEC. 203. SURETY BOND AMENDMENTS.**

(a) **CLARIFICATION OF MAXIMUM SURETY BOND GUARANTEE.**— Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking “contract up to” and

H. R. 4818—658

inserting “total work order or contract amount at the time of bond execution that does not exceed”.

(b) **AUDIT FREQUENCY.**—Section 411(g)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(g)(3)) is amended by striking “each year” and inserting “every three years”.

(c) **REPEAL.**—Section 207 of the Small Business Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is repealed.

**SEC. 204. EFFECTIVE DATE FOR CERTAIN FEES.**

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking “, but” and all that follows through the end and inserting a period.

*Speaker of the House of Representatives.*

*Vice President of the United States and President of the Senate.*