

Public Law 94-305
94th Congress

An Act

To amend the Small Business Act and Small Business Investment Act of 1958 to provide additional assistance under such Acts, to create a pollution control financing program for small business, and for other purposes.

June 4, 1976

[S. 2498]

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

TITLE I—SMALL BUSINESS DEVELOPMENT

TRANSFER OF DISASTER RELIEF AUTHORITY

SEC. 101. The President shall undertake a comprehensive review of all Federal disaster loan authorities and shall make a report to the Congress, not later than December 1, 1976, containing such recommendations and legislative proposals, including possible consolidation of Federal disaster loan authorities, as may be demonstrated to be necessary and appropriate to assure the most effective and efficient delivery of disaster relief. Such study shall give particular emphasis to alleviating any extraordinary burden the management of Federal disaster loan programs may impose on an agency.

Small Business
Act and Small
Business
Investment Act of
1958,
amendments.

Report to
Congress.
15 USC 636
note.

POLLUTION CONTROL

SEC. 102. Part A of title IV of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new sections:

“SEC. 404. (a) For purposes of this section, the term—

“(1) ‘pollution control facilities’ means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

“(2) ‘person’ includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

“(3) ‘qualified contract’ means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

“(b) The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified

Definitions.
15 USC 694-1.

Guarantees.

contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

"(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property may be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax.

"(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

"(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

Fees.

"(c) The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount exceed 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

Periodic review.

"(d) In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

"(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

"(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

"(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

“(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.
 “(e) Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

“(f) Section 402 shall apply to the administration of this section.
 “Sec. 405. There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 404. There are authorized to be appropriated to the fund from time to time such amounts not to exceed \$15,000,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 404 shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under section 404 shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into the Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under section 404 may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.”

SEC. 103. Section 403 of the Small Business Investment Act of 1958 (15 U.S.C. 694) is amended by striking out “this part” wherever it appears therein and by inserting in lieu thereof “section 401”.

SMALL BUSINESS INVESTMENT COMPANY LEVERAGE

SEC. 104. (a) Section 303(b) (1) of the Small Business Investment Act of 1958 is amended—

(1) by striking out “200” and inserting in lieu thereof “300”;
 and

(2) by striking out “\$15,000,000” and inserting in lieu thereof “\$35,000,000”.

(b) Section 303(b) (2) of such Act is amended—

(1) by striking out “300” and inserting in lieu thereof “400”;
 and

(2) by striking out “\$20,000,000” and inserting in lieu thereof “\$35,000,000”.

(c) Section 303(c) of such Act is amended—

(1) by striking out “300” in clause (2) (iii) and inserting in lieu thereof “400”; and

(2) by striking out “200” where it appears in clauses (2) (iii) and (4) and inserting in lieu thereof “300”.

15 USC 693.

Fund.

Establishment.

15 USC 694-2.

Ante, p. 663.

Appropriation
 authorization.

Interest.

15 USC 683.

SMALL BUSINESS INVESTMENT COMPANY GUARANTEES

Repeal. SEC. 105. The last sentence of section 305(b) of the Small Business
15 USC 685. Investment Act of 1958 is repealed.

LICENSING OF NONCORPORATE SMALL BUSINESS INVESTMENT COMPANIES

15 USC 662. SEC. 106. (a) Section 103 of the Small Business Investment Act of 1958 is amended by striking out "and" at the end of clause (6) and inserting in lieu thereof a semicolon, by striking out the period at the end of clause (7) and inserting in lieu thereof a semicolon and "and", and by adding at the end the following:

"Articles." "(8) the term 'articles' means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities."

15 USC 681. (b) Section 301(a) of such Act is amended—
(1) by striking the comma and inserting "or a limited partnership" after "incorporated body";
(2) by inserting "or otherwise existing" after "chartered";
(3) by inserting "or partners" after "shareholders"; and
(4) by striking the words "of incorporation".

(c) Section 301(b) of such Act is amended by striking the words "of incorporation".

(d) Section 301(c) of such Act is amended by striking the words "of incorporation" wherever they appear therein.

15 USC 682. (e) Section 302(a) of such Act is amended by striking the words "of incorporation".

15 USC 687d. (f) Section 312 of such Act is amended—
(1) by inserting "or partners" after "shareholders"; and
(2) by striking "or shareholders" wherever it appears therein and by inserting "shareholder, or partner".

REPEAL OF 50 PERCENT LIMITATION ON BANK INVESTMENT

15 USC 682. SEC. 107. Section 302(b) of the Small Business Investment Act of 1958 is amended by striking out all that follows "upon the making of that acquisition", and inserting in lieu thereof the following: "the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital surplus."

LOANS FOR PLANT ACQUISITION

15 USC 696. SEC. 108. (a) Section 502 of the Small Business Investment Act of 1958 is amended by inserting "acquisition," after "plant".

15 USC 636. (b) Section 7(a)(4)(C) of the Small Business Act is amended to read as follows: "(C) no such loans including renewals and extensions thereof may be made for a period or periods exceeding ten years, except that such portion of a loan made for the purpose of acquiring real property or constructing facilities may have a maturity of twenty years plus such additional period as is estimated may be required to complete such construction."

ECONOMIC OPPORTUNITY LOAN LIMIT

15 USC 636. SEC. 109. Section 7(i) of the Small Business Act is amended by striking from paragraphs (1) and (3) thereof the figure "\$50,000" and inserting in lieu thereof the figure "\$100,000".

DEVELOPMENT COMPANY LOAN LIMIT

SEC. 110. Section 502(3) of the Small Business Investment Act of 1958 is amended by striking out "\$350,000" and inserting in lieu thereof "\$500,000". 15 USC 696

REGULAR BUSINESS LOAN LIMIT

SEC. 111. Section 7(a)(4)(A) of the Small Business Act is amended by striking out "\$350,000" and by inserting in lieu thereof "\$500,000": *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed \$350,000". 15 USC 636.

FARMING AND AGRICULTURE RELATED INDUSTRIES

SEC. 112. (a) Section 2 of the Small Business Act (15 U.S.C. 631) is amended by redesignating subsections (b) and (c) as (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this Act are also to be used to assist such concerns."

(b) The first sentence of section 3 of the Small Business Act (15 U.S.C. 632) is amended by inserting after "concern" the following: ", including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries,".

(c) Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)) is amended by inserting "from non-Federal sources" immediately before the period at the end thereof.

(d) Section 7(b)(4) of the Small Business Act (15 U.S.C. 636(b)(4)) is amended by striking out the proviso.

(e) Section 18 of the Small Business Act (15 U.S.C. 647) is amended by inserting after "Federal Government" the following: ", except to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries,".

INCREASE AUTHORIZED CAPITAL OF SURETY BOND GUARANTEES

SEC. 113. Section 412 of the Small Business Investment Act of 1958 is amended by striking out "\$35,000,000" and inserting in lieu thereof "\$56,500,000". 15 USC 694c.

INTEREST RATE

SEC. 114. Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by striking from the first paragraph following paragraph (8) of such section 7(b) the following: "Notwithstanding the provisions of any other law, and except as otherwise provided in this subsection, the interest rate on the Administration's share of any loan

made under this subsection shall not exceed 3 per centum per annum, except that in the case of a loan made pursuant to paragraph (3), (5), (6), (7), or (8), the rate of interest on the Administration's share of such loan shall not be more than the higher of (A) $2\frac{3}{4}$ per centum per annum; or (B) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum.", and inserting in lieu thereof the following: "Notwithstanding the provisions of any other law, the interest rate on the Administration's share of any loan made under subsection (b) shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however,* That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster."

TITLE II—STUDY OF SMALL BUSINESS

ESTABLISHMENT

Office of
Advocacy.
15 USC 634a.

SEC. 201. There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

STUDY

15 USC 634b.

SEC. 202. The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

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

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

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

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

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

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

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

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

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

DUTIES

SEC. 203. The Office of Advocacy shall also perform the following duties on a continuing basis: 15 USC 634c.

(1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of the Small Business Act and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; and

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

STAFF AND POWERS

SEC. 204. In carrying out the provisions of section 202, after consultation with and subject to the approval of the Administrator, the Chief Counsel for Advocacy may— 15 USC 634d.

- 5 USC 5101
et seq., 5331.
- (1) employ and fix the compensation of such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the lowest rate for GS-15 of the General Schedule;
- (2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code;
- (3) consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;
- 15 USC 637.
- (4) utilize the services of the National Advisory Council established pursuant to the provisions of section 8 (b) (13) of the Small Business Act and in accordance with the provisions of such statute, also appoint such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of this title; and
- (5) hold hearings and sit and act at such times and places as he may deem advisable.

ASSISTANCE OF GOVERNMENT AGENCIES

- 15 USC 634e.
- SEC. 205. Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under this title.

REPORTS

- Publication.
15 USC 634f.
- SEC. 206. The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after the date of enactment of this title, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 202, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after the date of enactment of this title, he shall prepare and transmit a preliminary report on his activities. The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.
- Prohibition.

AUTHORIZATION

SEC. 207. There are authorized to be appropriated not to exceed \$1,000,000 to carry out the provisions of this title. Any sums so appropriated shall remain available until expended. 15 USC 634g.

TECHNICAL AMENDMENT

SEC. 208. Section 5(e) of the Small Business Act is hereby repealed. Repeal.
15 USC 634.

Approved June 4, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-519 accompanying H.R. 9056 (Comm. on Small Business) and No. 94-1115 (Comm. of Conference).

SENATE REPORTS: No. 94-420 (Comm. on Banking, Housing and Urban Affairs) and No. 94-501 (Comm. on Commerce).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Oct. 6, H.R. 9056 considered and passed House.

Dec. 12, considered and passed Senate.

Dec. 17, considered and passed House, amended, in lieu of H.R. 9056.

Vol. 122 (1976): May 13, House agreed to conference report.

May 20, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 23 (1976): June 4, Presidential statement.