

to the qualified oil and gas company, if the Board determines that—

“(1) credit is not otherwise available to the company under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of the company;

“(2) the prospective earning power of the company, together with the character and value of the security pledged, provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

“(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan; and

“(4) the company has agreed to an audit by the Government Accountability Office before issuance of the loan guarantee and annually while the guaranteed loan is outstanding.

“(g) TERMS AND CONDITIONS OF LOAN GUARANTEES.—

“(1) LOAN DURATION.—All loans guaranteed under this section shall be repayable in full not later than December 31, 2010, and the terms and conditions of each such loan shall provide that the loan agreement may not be amended, or any provision of the loan agreement waived, without the consent of the Board.

“(2) LOAN SECURITY.—A commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions as the Board determines are appropriate. The Board shall require security for the loans to be guaranteed under this section at the time at which the commitment is made.

“(3) FEES.—A qualified oil and gas company receiving a loan guarantee under this section shall pay a fee to the Department of the Treasury to cover costs of the program, but in no event shall such fee exceed an amount equal to 0.5 percent of the outstanding principal balance of the guaranteed loan.

“(4) GUARANTEE LEVEL.—No loan guarantee may be provided under this section if the guarantee exceeds 85 percent of the amount of principal of the loan.

“(h) REPORTS.—During fiscal year 1999 and each fiscal year thereafter until each guaranteed loan has been repaid in full, the Secretary of Commerce shall submit to Congress a report on the activities of the Board.

“(i) SALARIES AND ADMINISTRATIVE EXPENSES.—For necessary expenses to administer the Program, \$2,500,000 is appropriated to the Department of Commerce, to remain available until expended, which may be transferred to the Office of the Assistant Secretary for Trade Development of the International Trade Administration.

“(j) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2001.

“(k) REGULATORY ACTION.—Not later than 60 days after the date of the enactment of this Act [Aug. 17, 1999], the Board shall issue such final procedures, rules, and regulations as are necessary to carry out this section.

“FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

“(RESCISSIONS)

“SEC. 202. (a) Of the funds available in the nondefense category to the agencies of the Federal Government, \$125,000,000 are hereby rescinded: *Provided*, That rescissions pursuant to this subsection shall be taken only from administrative and travel accounts: *Provided further*, That rescissions shall be taken on a pro rata basis from funds available to every Federal agency, department, and office in the executive branch, including the Office of the President.

“(b) Within 30 days after the date of the enactment of this Act [Aug. 17, 1999], the Director of the Office of Management and Budget shall submit to the Commit-

tees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsection (a) of this section.

### “CHAPTER 3

#### “GENERAL PROVISIONS

“SEC. 301. No part of any appropriation contained in the Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

“This Act may be cited as the ‘Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999.’”

[Pub. L. 110–161, div. B, title I, §105(c), Dec. 26, 2007, 121 Stat. 1893, which directed amendment of section 101(c)(3)(C) of Pub. L. 106–51, set out above, by substituting “in 1998, and thereafter,” for “, in 1998”, was executed by making the substitution for “, in January 1998” to reflect the probable intent of Congress.]

[Pub. L. 107–63, title III, §336(b), Nov. 5, 2001, 115 Stat. 472, provided that: “The amendments made by this section [amending section 101 of Pub. L. 106–51, set out above] shall apply only with respect to any guarantee issued on or after the date of the enactment of this Act [Nov. 5, 2001].”]

#### § 1842. Authority for loan guarantees; terms and conditions

The Board, on such terms and conditions as it deems appropriate, may guarantee, or make commitments to guarantee, lenders against loss of principal or interest on loans that meet the requirements of this chapter.

(Pub. L. 92–70, §3, Aug. 9, 1971, 85 Stat. 178.)

#### § 1843. Limitations and conditions of loan guarantees

##### (a) Necessary findings

A guarantee of a loan may be made under this chapter only if—

(1) the Board finds that (A) the loan is needed to enable the borrower to continue to furnish goods or services and failure to meet this need would adversely and seriously affect the economy of or employment in the Nation or any region thereof, (B) credit is not otherwise available to the borrower under reasonable terms or conditions, and (C) the prospective earning power of the borrower, together with the character and value of the security pledged, furnish reasonable assurance that it will be able to repay the loan within the time fixed, and afford reasonable protection to the United States; and

(2) the lender certifies that it would not make the loan without such guarantee.

##### (b) Term of loans; renewal

Loans guaranteed under this chapter shall be payable in not more than five years, but may be renewable for not more than an additional three years.

##### (c) Interest rates, determination; guarantee fee

(1) Loans guaranteed under this chapter shall bear interest payable to the lending institutions at rates determined by the Board taking into account the reduction in risk afforded by the loan guarantee and rates charged by lending institutions on otherwise comparable loans.

(2) The Board shall prescribe and collect a guarantee fee in connection with each loan

guaranteed under this chapter. Such fee shall reflect the Government's administrative expense in making the guarantee and the risk assumed by the Government and shall not be less than an amount which, when added to the amount of interest payable to the lender of such loan, produces a total charge appropriate for loan agreements of comparable risk and maturity if supplied by the normal capital markets.

(Pub. L. 92-70, § 4, Aug. 9, 1971, 85 Stat. 178.)

#### § 1844. Security for loan guarantees

In negotiating a loan guarantee under this chapter, the Board shall make every effort to arrange that the payment of the principal of and interest on any plan guaranteed shall be secured by sufficient property of the enterprise to collateralize fully the amount of the loan guarantee.

(Pub. L. 92-70, § 5, Aug. 9, 1971, 85 Stat. 179.)

#### § 1845. Requirements applicable to loan guarantees

##### (a) Stock dividends or other payments, prohibition; waiver

A guarantee agreement made under this chapter with respect to an enterprise shall require that while there is any principal or interest remaining unpaid on a guaranteed loan to that enterprise the enterprise may not—

- (1) declare a dividend on its common stock; or
- (2) make any payment on its other indebtedness to a lender whose loan has been guaranteed under this chapter.

The Board may waive either or both of the requirements set forth in this subsection, as specified in the guarantee agreement covering a loan to any particular enterprise, if it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee.

##### (b) Managerial changes

If the Board determines that the inability of an enterprise to obtain credit without a guarantee under this chapter is the result of a failure on the part of management to exercise reasonable business prudence in the conduct of the affairs of the enterprise, the Board shall require before guaranteeing any loan to the enterprise that the enterprise make such management changes as the Board deems necessary to give the enterprise a sound managerial base.

##### (c) Financial statement; access to documents

A guarantee of a loan to any enterprise shall not be made under this chapter unless—

- (1) the Board has received an audited financial statement of the enterprise; and
- (2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

##### (d) Exhaustion of remedies

No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any reme-

edies which it may have under the guarantee agreement.

##### (e) Protective provisions; advances

(1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph (A), the borrower is not in default under the loan agreement: *Provided*, That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

##### (f) Loan security, priority; collateral

(1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 68 of the Bankruptcy Act.

(Pub. L. 92-70, § 6, Aug. 9, 1971, 85 Stat. 179.)

#### REFERENCES IN TEXT

Section 68 of the Bankruptcy Act, referred to in subsection (f)(2), was classified to section 108 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. See sections 502(b)(3) and 553 of Title 11.