

shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

(Pub. L. 103-355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 112-239, div. A, title XVI, §1692, Jan. 2, 2013, 126 Stat. 2089.)

#### CODIFICATION

Section was formerly set out as a note under section 644 of this title.

Section was enacted as part of the Federal Acquisition Streamlining Act of 1994, and not as part of the Small Business Act which comprises this chapter.

#### AMENDMENTS

2013—Subsec. (b)(3) to (5). Pub. L. 112-239, §1692(a), added pars. (3) to (5).

Subsec. (c)(3). Pub. L. 112-239, §1692(b), struck out “(established under section 644(k) of this title)” after “Utilization”.

Subsec. (d). Pub. L. 112-239, §1692(c), inserted “(or the designee of the Administrator)” after “Small Business Administration”.

### § 645. Offenses and penalties

#### (a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

#### (b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

#### (c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his

own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### (d) Misrepresentation, etc.

(1) Whoever misrepresents the status of any concern or person as a “small business concern”, a “qualified HUBZone small business concern”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women”, in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638, 644, or 657a of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,<sup>1</sup> shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3) LIMITATION ON LIABILITY.—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this chapter), or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program defined in chapter 142 of title 10; however nothing in this chapter shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advi-

<sup>1</sup> So in original. Following provision probably should be set flush with par. (1).

sory opinion. If the General Counsel of the Administration rejects the advisory opinion, the Administration shall notify the entity issuing the advisory opinion and the recipient of the opinion, after which time the business concern may not rely upon the opinion.

**(e) Representations under subsection (d) to be in writing**

Any representation of the status of any concern or person as a “small business concern”, a “HUBZone small business concern”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women” in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

**(f) Misrepresentation of compliance with section 636(j)(10)(I)**

Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d).

**(g) Subcontracting limitations**

**(1) In general**

Whoever violates a requirement established under section 657s of this title shall be subject to the penalties prescribed in subsection (d), except that, for an entity that exceeded a limitation on subcontracting under such section, the fine described in subsection (d)(2)(A) shall be treated as the greater of—

(A) \$500,000; or

(B) the dollar amount expended, in excess of permitted levels, by the entity on subcontractors.

**(2) Monitoring**

Not later than 1 year after January 2, 2013, the Administrator shall take such actions as are necessary to ensure that an existing Federal subcontracting reporting system is modified to notify the Administrator, the appropriate Director of the Office of Small and Disadvantaged Business Utilization, and the appropriate contracting officer if a requirement established under section 657s of this title is violated.

(Pub. L. 85-536, §2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88-264, §2, Feb. 5, 1964, 78 Stat. 8; Pub. L. 99-272, title XVIII, §18009, Apr. 7, 1986, 100 Stat. 368; Pub. L. 100-656, title IV, §405, Nov. 15, 1988, 102 Stat. 3875; Pub. L. 103-355, title VII, §7106(c), Oct. 13, 1994, 108 Stat. 3376; Pub. L. 105-85, div. A, title X, §1073(g)(4), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105-135, title VI, §603(c), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 112-239, div. A, title XVI, §§1652, 1681(a), 1682(a), Jan. 2, 2013, 126 Stat. 2081, 2085, 2086.)

REFERENCES IN TEXT

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812), referred to in subsec. (d)(2)(B), is subtitle B of title VI of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1934, as amended, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (d)(2)(D), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, which was classified to section 637(c) of this title prior to repeal by Pub. L. 102-191. See section 656 of this title.

AMENDMENTS

2013—Subsec. (d)(2)(C). Pub. L. 112-239, §1682(a), struck out “on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract” after “regulation”).

Subsec. (d)(3). Pub. L. 112-239, §1681(a), added par. (3).

Subsec. (g). Pub. L. 112-239, §1652, added subsec. (g).

1997—Subsec. (d)(1). Pub. L. 105-135, §603(c)(1)(A), inserted “, a ‘qualified HUBZone small business concern’,” after “‘small business concern’,”.

Pub. L. 105-85 substituted “concern owned and controlled by women” for “concerns owned and controlled by women”.

Subsec. (d)(1)(A). Pub. L. 105-135, §603(c)(1)(B), substituted “section 638, 644, or 657a” for “section 638 or 644”.

Subsec. (e). Pub. L. 105-135, §603(c)(2), inserted “, a ‘HUBZone small business concern’,” after “‘small business concern’,”.

Pub. L. 105-85 substituted “concern owned and controlled by women” for “concerns owned and controlled by women”.

1994—Subsec. (d)(1). Pub. L. 103-355, §7106(c)(1), substituted “, a ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, or a ‘small business concern owned and controlled by women’” for “or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’”.

Subsec. (e). Pub. L. 103-355, §7106(c)(2), substituted “, a ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, or a ‘small business concern owned and controlled by women’” for “or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’”.

1988—Subsec. (d). Pub. L. 100-656, §405(a), amended subsec. (d) generally, designating existing provisions as par. (1), redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (D), substituting “subject to the penalties and remedies described in paragraph (2)” for “punished by a fine of not more than \$50,000 or by imprisonment for not more than five years, or both”, and adding par. (2).

Subsec. (f). Pub. L. 100-656, §405(b), added subsec. (f).

1986—Subsecs. (d), (e). Pub. L. 99-272 added subsecs. (d) and (e).

1964—Subsec. (c). Pub. L. 88-264 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

## REGULATIONS

Pub. L. 112-239, div. A, title XVI, §1681(b), Jan. 2, 2013, 126 Stat. 2085, provided that: “Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue rules defining what constitutes an adequate advisory opinion for purposes of section 16(d)(3) of the Small Business Act [15 U.S.C. 645(d)(3)].”

## DEVELOPMENT AND PROMULGATION OF GUIDANCE

Pub. L. 112-239, div. A, title XVI, §1682(b), Jan. 2, 2013, 126 Stat. 2086, provided that: “Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall develop and promulgate guidance implementing this section [amending this section and enacting provisions set out as a note below].”

## PUBLICATION OF PROCEDURES REGARDING SUSPENSION AND DEBARMENT

Pub. L. 112-239, div. A, title XVI, §1682(c), Jan. 2, 2013, 126 Stat. 2086, provided that: “Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator [of the Small Business Administration] shall publish and maintain on the [Small Business] Administration’s Web site the current standard operating procedures of the Administration for suspension and debarment, and the name and contact information for the individual designated by the Administrator as the senior individual responsible for suspension and debarment proceedings.”

### § 645a. Annual report on suspensions and debarments proposed by Small Business Administration

#### (a) Report requirement

The Administrator of the Small Business Administration shall submit each year to the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report on the suspension and debarment actions taken by the Administrator during the year preceding the year of submission of the report.

#### (b) Matters covered

The report required by subsection (a) shall include the following information for the year covered by the report:

##### (1) Number

The number of contractors proposed for suspension or debarment.

##### (2) Source

The office within a Federal agency that originated each proposal for suspension or debarment.

##### (3) Reasons

The reason for each proposal for suspension or debarment.

##### (4) Results

The result of each proposal for suspension or debarment, and the reason for such result.

##### (5) Referrals

The number of suspensions or debarments referred to the Inspector General of the Small Business Administration or another agency, or to the Attorney General (for purposes of this paragraph, the Administrator may redact identifying information on names of companies or other information in order to protect

the integrity of any ongoing criminal or civil investigation).

(Pub. L. 112-239, div. A, title XVI, §1683, Jan. 2, 2013, 126 Stat. 2086.)

## CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

### § 646. Liens

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85-536, §2[17], July 18, 1958, 72 Stat. 396.)

## PRIOR PROVISIONS

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, was previously classified to this section. See section 640 of this title, and Codification note set out under section 631 of this title.

### § 647. Duplication of activities of other Federal departments or agencies

#### (a) General prohibition; exception

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,<sup>1</sup> and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

#### (b) Definitions

As used in this chapter—

(1) “agricultural enterprises” means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

(2) “credit elsewhere” means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(Pub. L. 85-536, §2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93-386, §5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94-305, title I, §112(e), June 4, 1976, 90 Stat. 667; Pub. L. 96-38, title I, §101(c), July 25, 1979, 93 Stat. 119; Pub. L. 96-302, title I, §119(c), July 2, 1980, 94 Stat. 841; Pub. L. 98-270, title III, §303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98-369, div. B,

<sup>1</sup> So in original.