

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114-125 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).
2010—Par. (6), Pub. L. 111-240 added par. (6).

§ 634d. Staff and powers of Office of Advocacy

In carrying out the provisions of sections 634a to 634g of this title, the Chief Counsel for Advocacy may—

(1) employ and fix the compensation of such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, 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: *Provided, however,* That not more than 14 staff personnel at any one time may be employed and compensated at a rate not in excess of GS-15, step 10, of the General Schedule;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;

(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;

(4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title 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 sections 634a to 634g of this title; and

(5) hold hearings and sit and act at such times and places as he may deem advisable.

(Pub. L. 94-305, title II, §204, June 4, 1976, 90 Stat. 669; Pub. L. 96-302, title IV, §402, July 2, 1980, 94 Stat. 850; Pub. L. 103-403, title VI, §§605(b), 610, Oct. 22, 1994, 108 Stat. 4203, 4204.)

REFERENCES IN TEXT

The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5.

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1994—Pub. L. 103-403, §§605(b), 610(1), in introductory provisions substituted “provisions of sections 634a to 634g of this title, the Chief” for “provisions of section 634b of this title, after consultation with and subject to the approval of the Administrator, the Chief”.

Par. (1), Pub. L. 103-403, §610(2), substituted “14” for “ten” before “staff personnel”.

1980—Par. (1), Pub. L. 96-302 authorized employment at any one time of ten staff personnel at rate of com-

pensation not in excess of GS-15, step 10, of the General Schedule.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

§ 634e. Assistance of Government agencies

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 sections 634a to 634g of this title.

(Pub. L. 94-305, title II, §205, June 4, 1976, 90 Stat. 670.)

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§ 634f. Reports

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, 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 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, 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.

(Pub. L. 94-305, title II, §206, June 4, 1976, 90 Stat. 670.)

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§ 634g. Budgetary line item and authorization of appropriations**(a) Appropriation requests**

Each budget of the United States Government submitted by the President under section 1105 of title 31 shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.

(b) Administrative operations

The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out sections 634a

to 634g of this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.

(Pub. L. 94-305, title II, §207, as added Pub. L. 111-240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.)

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PRIOR PROVISIONS

A prior section 634g, Pub. L. 94-305, title II, §207, June 4, 1976, 90 Stat. 671, related to authorization of appropriations, prior to repeal by Pub. L. 111-240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.

§ 635. Deposit of moneys; depositaries, custodians, and fiscal agents; contributions to employees' compensation funds

(a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this chapter. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 633(c) of this title. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(Pub. L. 85-536, §2[6], July 18, 1958, 72 Stat. 387.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 206 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, which was previously classified to this section. See Codification note set out under section 631 of this title.

§ 636. Additional powers

(a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooper-

tion with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—

(i) IN GENERAL.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(ii) LIQUIDITY.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guaranteed portion of the loan being sold on the secondary market.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(C) LENDING LIMITS OF LENDERS.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), and (E), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or

(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.