

DEFINITIONS

Pub. L. 112–81, div. E, title L, §5002, Dec. 31, 2011, 125 Stat. 1823, provided that: “In this division [enacting this section and section 638a of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under this section and sections 631 and 638 of this title, and amending provisions set out as a note under section 638 of this title]—

“(1) the terms ‘Administration’ and ‘Administrator’ mean the Small Business Administration and the Administrator thereof, respectively;

“(2) the terms ‘extramural budget’, ‘Federal agency’, ‘Small Business Innovation Research Program’, ‘SBIR’, ‘Small Business Technology Transfer Program’, and ‘STTR’ have the meanings given such terms in section 9 of the Small Business Act (15 U.S.C. 638); and

“(3) the term ‘small business concern’ has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).”

§ 639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this chapter provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this chapter.

(b) Repealed. Pub. L. 115–189, § 7, June 21, 2018, 132 Stat. 1498

(c) Repealed. Pub. L. 104–66, title I, § 1091(f), Dec. 21, 1995, 109 Stat. 722

(d) Annual report of Department of Defense

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an an-

nual report to the Committees on Small Business of the Senate and the House of Representatives, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) Retention of records

(1)¹ The Administration and the Inspector General of the Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives, or their duly authorized representatives.

(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 636(j) or 637(a) of this title. Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request by such office.

(f) Consultation and cooperation with Government departments and agencies

To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration

The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

¹ Paragraph designation “(1)” supplied editorially.

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(h) Report to Congress on secondary market operations

The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

(Pub. L. 85-536, §2[10], July 18, 1958, 72 Stat. 393; Pub. L. 87-305, §5(a), Sept. 26, 1961, 75 Stat. 666; Pub. L. 89-348, §1(3), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93-237, §7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93-386, §4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93-608, §3(4), (5), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95-89, title II, §§203-208, 211, Aug. 4, 1977, 91 Stat. 557, 558; Pub. L. 95-315, §6, July 4, 1978, 92 Stat. 379; Pub. L. 97-35, title XIX, §1904, Aug. 13, 1981, 95 Stat. 772; Pub. L. 98-352, §4, July 10, 1984, 98 Stat. 331; Pub. L. 100-656, title IV, §406, Nov. 15, 1988, 102 Stat. 3876; Pub. L. 101-37, §15, June 15, 1989, 103 Stat. 73; Pub. L. 101-574, title II, §241, Nov. 15, 1990, 104 Stat. 2826; Pub. L. 104-66, title I, §1091(f), Dec. 21, 1995, 109 Stat. 722; Pub. L. 115-189, §7, June 21, 2018, 132 Stat. 1498.)

PRIOR PROVISIONS

Prior similar provisions were contained in sections 211 and 215 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, 238, as amended by act Aug. 9, 1955, ch. 628, §§6, 10, 11, 69 Stat. 550, 551, which were previously classified to sections 640 and 644 of this title. The provisions of section 210 of act July 30, 1953, formerly classified to this section, were transferred to section 2 [8] of Pub. L. 85-536, and are classified to section 637(b)(2) of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-189 struck out subsec. (b). Text read as follows: “The Administration shall

make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.”

1995—Subsec. (c). Pub. L. 104-66 struck out subsec. (c) which related to surveys, and their corresponding reports and recommendations, for the determination of factors tending to injure small businesses.

1990—Subsec. (d). Pub. L. 101-574 substituted “the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives” for “the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 [“forty-five” in original text] days after the close of the month”, “small business concerns” for “small-business concerns”, and “such reports” for “such monthly reports”.

1989—Subsec. (e)(2). Pub. L. 101-37 substituted “, of the disposition of the request” for “of the disposition of the matter”.

1988—Subsec. (e). Pub. L. 100-656 inserted “and the Inspector General of the Administration” after “Administration”, which was executed by making the insertion after the first reference to “Administration”, and added par. (2).

1984—Subsec. (h). Pub. L. 98-352 added subsec. (h).

1981—Subsec. (b). Pub. L. 97-35 substituted “this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives” for “subsection, and on the projected and actual energy savings and numbers of jobs created by firms through loans made under section 636(l) of this title. The Department of Energy shall assist the Administration in obtaining information and compiling this report”.

1978—Subsec. (b). Pub. L. 95-315 inserted provisions requiring the report to contain number and amount of loans, applications for loans, etc.

1977—Subsec. (a). Pub. L. 95-89, §§203, 211, included the Senate Select Committee on Small Business as an additional recipient of the annual report and provided for the contents of the report as it relates to minority small business concerns.

Subsec. (b). Pub. L. 95-89, §204, substituted “Committee on Small Business of the House of Representatives” for “House Select Committee to Conduct a Study and Investigation of the Problems of Small Business”.

Subsec. (c)(2). Pub. L. 95-89, §205, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (d). Pub. L. 95-89, §206, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (e). Pub. L. 95-89, §207, substituted “Committee on Small Business of the House of Representatives”

for “House Select Committee To Conduct a Study and Investigation of the Problems of Small Business”.

Subsec. (g). Pub. L. 95-89, §208, substituted “Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives” for “Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives”.

1975—Subsec. (a). Pub. L. 93-608, §3(4), substituted “fiscal” for “calendar” in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93-608, §3(5), substituted “as soon as practicable each fiscal year” for “on December 31 of each year”.

1974—Subsec. (a). Pub. L. 93-237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the States, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93-386 added subsec. (g).

1965—Subsec. (a). Pub. L. 89-348 repealed provision of subsec. (a) which required as part of the annual report to the President and to Congress by the Small Business Administration, a report on the progress in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation.

1961—Subsec. (a). Pub. L. 87-305, §5(a)(1), changed the reporting requirements from semiannual to annual basis and required the inclusion of information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation, such requirement to be in lieu of progress reports on a quarterly basis.

Subsec. (b). Pub. L. 87-305, §5(a)(2), struck out “June 30 and” before “December 31”.

Subsec. (c). Pub. L. 87-305, §5(a)(3), designated existing provisions of first and second sentences as pars. (1) and (2), substituted “direct” for “request” and “promote undue concentration of economic power, or otherwise injure small business” for “injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this chapter” and inserted “of any activity of the Government which may affect small business,” after “surveys” in par. (1) and required reports to be made not less than once every year in par. (2).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97-35, set out as a note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (a), (b), and (d) of this section relating to

submitting annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 64 and 191 of House Document No. 103-7.

SMALL BUSINESS ADMINISTRATION PROGRAM DATA AND EVALUATION; REPORT; IMPLEMENTATION

Pub. L. 100-590, title I, §109, Nov. 3, 1988, 102 Stat. 2994, provided that: “The Small Business Administration shall develop a comprehensive system to systematically acquire data on the number of small businesses which participate in Administration programs, the nature and extent of their participation, the type of business, the results of such participation, and such other information as the Administration deems appropriate. It shall also include the number and dollar amount of guaranteed loans by lender, and the interest rate thereon, and the number and dollar amount of sales in the secondary market both by lender and by purchaser. The data shall be compiled and maintained to permit a statistically valid analysis and computation and evaluation of costs and benefits. The Administration shall submit a report to the Small Business Committees of the Senate and the House of Representatives not later than March 31, 1989, such report to include its conclusions and recommendations and estimate of the costs involved in implementing such a program and shall implement the system for all program assistance made available on or after October 1, 1989.”

EX. ORD. NO. 11518. INCREASED REPRESENTATION OF INTERESTS OF SMALL BUSINESS CONCERNS BEFORE GOVERNMENT DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11518, Mar. 20, 1970, 35 F.R. 4939, provided: WHEREAS the policy of the Government of the United States is to insure the continuance of a strong and healthy free enterprise system; and

WHEREAS the existence of a strong and healthy free enterprise system is directly related to the well being and competitive strength of small business concerns and their opportunities for free entry into business, growth, and expansion; and

WHEREAS the departments and agencies of the United States Government exercise, through their regulatory and other programs and practices, a significant influence on the well being and competitive strength of business concerns, particularly minority-owned business concerns, and their opportunities for free entry into business, growth and expansion; and

WHEREAS members of minority groups traditionally have aspired to own their own businesses and thereby to participate in our free enterprise system; and

WHEREAS members of certain minority groups through no fault of their own have been denied the full opportunity to achieve these aspirations; and

WHEREAS the policy of the Executive Branch of the United States Government continues to be, as was described by President Dwight D. Eisenhower, “to strive to eliminate obstacles to the growth of small business”; and

WHEREAS the Small Business Act (72 Stat. 384, 15 U.S.C. 631) declares the Congressional policy that the United States Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns; and

WHEREAS the Small Business Administration is the agency within the Executive Branch of the United States Government especially responsible for and with an established program of advocacy in matters relating to small business; and

WHEREAS section 8(b)(12) of the Small Business Act (72 Stat. 391, 15 U.S.C. 637(b)(12)) empowers the Small Business Administration to consult and cooperate with all Government agencies for the purpose of insuring that small business concerns receive fair and reasonable treatment from such agencies, and section 10(f) of that Act (72 Stat. 393, 15 U.S.C. 639(f)) requires each department and agency of the Federal Government, when requested by the Administrator of the Small Business

Administration, to consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small business concerns, in order to insure that small business interests will be recognized, protected, and preserved:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Small Business Act, it is ordered as follows:

SECTION 1. The Small Business Administration, as the spokesman for and advocate of the small business community, shall advise and counsel small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully heard, their rights fully protected, and their valid interests fully advanced.

SEC. 2. Departments and agencies of the Executive Branch of the United States Government shall call upon the Small Business Administration for advice, guidance, and assistance when considering matters which reasonably can be construed as materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. In taking action on such matters, these departments and agencies shall act in a manner calculated to advance the valid interests of small business concerns.

SEC. 3. The Small Business Administration, whenever it determines that the valid interests of small business concerns so warrant, shall take such action as may be appropriate to insure the timely presentation to departments and agencies of the United States Government of matters materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. To this end, the Small Business Administration may participate in investigations, hearings, or other proceedings pending before such departments or agencies and submit evidence, briefs, and arguments in accordance with, and to the extent permitted by, the department's or agency's rules of practice and procedure.

SEC. 4. In performing the responsibilities and duties placed on it by this order, the Small Business Administration shall particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community.

SEC. 5. Nothing in this order shall be construed to authorize the Small Business Administration to act as an attorney for an individual concern in any investigation, hearing, or other proceeding pending before any department or agency of the United States Government. Nothing in this order shall be construed to subject any department or agency to the authority of any other department or agency, to affect the present authority of any department or agency to participate in the proceedings of another department or agency, or to affect the authority of the Attorney General under 28 U.S.C. 519.

SEC. 6. The term "small business concern" as used in this order shall have the same meaning as in the Small Business Act.

RICHARD NIXON.

§ 639a. Review of loan program; submission of estimated needs for additional authorization

It is the sense of the Congress that the regular business loan program of the Small Business Administration should be reviewed by the Congress at least once every two years. It is further the sense of the Congress that the Small Business Administration should submit its estimated needs for additional authorization for such program to the Congress at least one year in advance of the date on which such authorization is to be provided, in order to assure an orderly and

recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87-550, §1(b), July 25, 1962, 76 Stat. 221.)

CODIFICATION

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

§ 640. Voluntary agreements among small-business concerns

(a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

(b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

(d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85-536, §2[11], July 18, 1958, 72 Stat. 394.)