

SUBCHAPTER IV—A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE
AND QUALIFIED CONTRACT GUARANTEES**§ 692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property****(a) Nonavailability of guarantees from other sources; participation with qualified sureties**

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. 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) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) 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 lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. 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.

(c) Escrow; default; additional discretionary provisions

In connection with the guarantee of rentals under any lease 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 minimum guaranteed

annual rental required under the lease, 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 lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, 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 lease 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 part, as the Administrator may in his discretion require.

(Pub. L. 85-699, title IV, §401, as added Pub. L. 89-117, title III, §316(a), Aug. 10, 1965, 79 Stat. 482; amended Pub. L. 90-104, title II, §209, Oct. 11, 1967, 81 Stat. 271; Pub. L. 91-609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

Editorial Notes

AMENDMENTS

1970—Subsecs. (b), (c)(4). Pub. L. 91-609 substituted "part" for "title".

1967—Subsec. (a). Pub. L. 90-104 struck out from introductory text "that are (1) eligible for loans under section 636(b)(3) of this title, or (2) eligible for loans under subchapter IV of chapter 34 of Title 42," after "small business concerns".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

§ 693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

Without limiting the authority conferred upon the Administrator and the Administration by section 671 of this title, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 634(b) of this title with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

(Pub. L. 85-699, title IV, §402, as added Pub. L. 89-117, title III, §316(a), Aug. 10, 1965, 79 Stat. 483;

amended Pub. L. 91-609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

Editorial Notes

AMENDMENTS

1970—Pub. L. 91-609 substituted “part” for “title”.

§ 694. Repealed. Pub. L. 100-590, title I, § 111(b), Nov. 3, 1988, 102 Stat. 2995

Section, Pub. L. 85-699, title IV, §403, as added Pub. L. 89-117, title III, §316(a), Aug. 10, 1965, 79 Stat. 484; amended Pub. L. 91-609, title IX, §911(a)(3), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93-386, §6(a)(2), Aug. 23, 1974, 88 Stat. 747; Pub. L. 94-305, title I, §103, June 4, 1976, 90 Stat. 665; Pub. L. 95-89, title I, §103, Aug. 4, 1977, 91 Stat. 556, provided for revolving fund for commercial or industrial lease guarantees.

Statutory Notes and Related Subsidiaries

TRANSFER OF REMAINING LEASE GUARANTEE FUND MONEYS

Pub. L. 100-590, title I, §111(b), Nov. 3, 1988, 102 Stat. 2995, provided in part that: “Any moneys remaining in the Lease Guarantee Fund on the date of enactment of this Act [Nov. 3, 1988] shall be transferred to the Small Business Administration’s business loan and investment fund.”

§ 694-1. Planning design or installation of pollution control facilities

(a) Definitions

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) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

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 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 shall 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, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

(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.

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

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 be less than 1 per centum or more than 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.

(d) Requirements of Administration; escrow; default; discretionary provisions

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) Assignment of guarantee

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) Application of section 693 of this title

Section 693 of this title shall apply to the administration of this section.

(Pub. L. 85-699, title IV, §404, as added Pub. L. 94-305, title I, §102, June 4, 1976, 90 Stat. 663; amended Pub. L. 98-473, title I, §115, Oct. 12, 1984, 98 Stat. 1967.)

Editorial Notes

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-473, §115(1), (2), substituted “shall be issued” for “may be issued” and inserted “, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired”.

Subsec. (c). Pub. L. 98-473, §115(3), substituted “be less than 1 per centum or more than 3½ per centum” for “exceed 3½ per centum”.

§ 694-2. Revolving fund for qualified contract guarantees; investment of idle funds

There is 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 purpose of section 694-1 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694-1 of this title shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 694-1 of this title shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part 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.

(Pub. L. 85-699, title IV, §405, as added Pub. L. 94-305, title I, §102, June 4, 1976, 90 Stat. 665;

amended Pub. L. 95-89, title I, §104, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96-302, title I, §112, July 2, 1980, 94 Stat. 837.)

Editorial Notes

AMENDMENTS

1980—Pub. L. 96-302 inserted investment of idle funds provision.

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a \$15,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 694-2 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

Statutory Notes and Related Subsidiaries

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.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as a note under section 633 of this title.

PART B—SURETY BOND GUARANTEES

§ 694a. Definitions

As used in this part—

(1) The term “bid bond” means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) The term “payment bond” means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) The term “performance bond” means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) The term “surety” means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(5) The term “obligee” means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obliga-

tion of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) The term “principal” means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) The term “prime contractor” means the person with whom the obligee has contracted to perform the contract.

(8) The term “subcontractor” means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purpose of sections 694a, 694b, and 694c of this title the term “small business concern” means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.

(Pub. L. 85-699, title IV, §410, as added Pub. L. 91-609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1812; amended Pub. L. 95-507, title I, §110, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 111-5, div. A, title V, §508(c), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112-239, div. A, title XVI, §1695(c), Jan. 2, 2013, 126 Stat. 2090.)

Editorial Notes

AMENDMENTS

2013—Par. (9). Pub. L. 112-239 added par. (9).

2009—Par. (9). Pub. L. 111-5, §508(c), (f), temporarily added par. (9) which read as follows: “Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 694a, 694b, and 694c of this title the term “small business concern” means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.” See Termination Date of 2009 Amendment note below.

1978—Par. (4)(D). Pub. L. 95-507 added cl. (D).

Statutory Notes and Related Subsidiaries

TERMINATION DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. A, title V, §508(f), Feb. 17, 2009, 123 Stat. 159, provided that: “The amendments made by this section [amending this section and section 694b of this title] shall remain in effect until September 30, 2010.”

TECHNICAL ASSISTANCE IN CONNECTION WITH CONSTRUCTION CONTRACTS; AUTHORIZATION OF APPROPRIATIONS

Section 911(b) of Pub. L. 91-609 authorized the Secretary of Housing and Urban Development to take such steps and carry out such activities as he determined to be necessary or desirable to provide, either directly or by contract or other arrangement, technical assistance to any contractor or subcontractor for whom a bid, payment, or performance bond is guaranteed under part B of title IV of the Small Business Investment Act of

1958 [this part] in connection with any construction contract, in order to assist such contractor or subcontractor in obtaining or carrying out such contract, and authorized to be appropriated for each of the first three fiscal years ending after the date of the enactment of this Act [Dec. 31, 1970] such sums, not to exceed \$1,500,000, as were necessary to enable the Secretary to carry out his functions under paragraph (1).

§ 694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal's breach of bond

(1)(A) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41.

(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

(3) The Administration may authorize any surety, without further administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Indemnification of surety against loss from avoiding breach

Subject to the provisions of this section, in connection with the issuance by the Administra-

tion of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): *Provided, however—*

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).

(c) Limitation of liability

Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 90 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3);

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the administration's¹ specific approval for the issuance of a bond, if—

(A) the total amount of the contract at the time of execution of the bond or bonds is \$100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 637(d) of this title, or to a qualified HUBZone small business concern (as defined in section 632(p)² of this title); or

(4) determined pursuant to subsection (b), if applicable.

(d) Regulations

The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

¹ So in original. Probably should be capitalized.

² See References in Text note below.

(e) Reimbursement of surety; conditions

Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds \$6,500,000,

(3) the surety has breached a material term or condition of such guarantee agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) Procedure for reimbursement

The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit

(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(j) Administration not to deny liability based on information provided as part of application

For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

(Pub. L. 85-699, title IV, §411, as added Pub. L. 91-609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1813; amended Pub. L. 93-386, §6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749; Pub. L. 95-507, title I, §111, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 96-302, title I, §115, July 2, 1980, 94 Stat. 839; Pub. L. 99-272, title XVIII, §18014, Apr. 7, 1986, 100 Stat. 370; Pub. L. 100-590, title II, §§202-204, Nov. 3,

1988, 102 Stat. 3007–3009; Pub. L. 104–208, div. D, title II, §206(a), Sept. 30, 1996, 110 Stat. 3009–738; Pub. L. 105–135, title VI, §604(d), Dec. 2, 1997, 111 Stat. 2633; Pub. L. 106–554, §1(a)(9) [title VIII, §805(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–705; Pub. L. 108–447, div. K, title II, §203(a), (b), Dec. 8, 2004, 118 Stat. 3465, 3466; Pub. L. 111–5, div. A, title V, §508(a), (b), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112–239, div. A, title XVI, §1695(a), (b), Jan. 2, 2013, 126 Stat. 2089, 2090; Pub. L. 114–92, div. A, title VIII, §874(b), Nov. 25, 2015, 129 Stat. 941.)

Editorial Notes

REFERENCES IN TEXT

Section 632(p) of this title, referred to in subsec. (c)(3)(B), was redesignated section 657a(b) of this title by Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114–92 substituted “90” for “70”.

2013—Subsec. (a)(1). Pub. L. 112–239, §1695(a), designated existing provisions as subpar. (A), substituted “does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41.” for “does not exceed \$2,000,000.”, and added subpar. (B).

Subsec. (e). Pub. L. 112–239, §1695(b)(1), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

“(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

“(2) the total contract amount at the time of execution of the bond or bonds exceeds \$2,000,000,

“(3) the surety has breached a material term or condition of such guarantee agreement, or

“(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d) of this section.”

Subsec. (j). Pub. L. 112–239, §1695(b)(2), added subsec. (j).

2009—Subsec. (a)(1). Pub. L. 111–5, §508(a), (f), temporarily amended par. (1) by designating existing provisions as subpar. (A), substituting “\$5,000,000” for “\$2,000,000”, and adding subpar. (B) which read as follows: “The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.” See Termination Date of 2009 Amendment note below.

Subsec. (e). Pub. L. 111–5, §508(b)(1), (f), temporarily added subsec. (e), the text of which read as follows:

“Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

“(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

“(2) the total contract amount at the time of execution of the bond or bonds exceeds \$5,000,000,

“(3) the surety has breached a material term or condition of such guarantee agreement, or

“(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).”

See Termination Date of 2009 Amendment note below.

Subsec. (k). Pub. L. 111–5, §508(b)(2), (f), temporarily added subsec. (k) which read as follows: “For bonds

made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application.” See Termination Date of 2009 Amendment note below.

2004—Subsec. (a)(1). Pub. L. 108–447, §203(a), substituted “total work order or contract amount at the time of bond execution that does not exceed” for “contract up to”.

Subsec. (g)(3). Pub. L. 108–447, §203(b), substituted “every three years” for “each year”.

2000—Subsecs. (a)(1), (e)(2). Pub. L. 106–554 substituted “\$2,000,000” for “\$1,250,000”.

1997—Subsec. (c)(3)(B). Pub. L. 105–135 inserted “, or to a qualified HUBZone small business concern (as defined in section 632(p) of this title)” before semicolon.

1996—Subsec. (a)(5). Pub. L. 104–208 added par. (5).

1988—Subsec. (a). Pub. L. 100–590, §202, amended subsec. (a) generally, substituting pars. (1) to (4) for former pars. (1) to (6).

Subsec. (b). Pub. L. 100–590, §203(c), added par. (2), redesignated former par. (2) as (3), struck out former par. (3) which prohibited the making subsequent to two years after Oct. 24, 1978, of new agreements to indemnify, and inserted concluding provision: “In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).”

Subsec. (c). Pub. L. 100–590, §203(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which subsection (b) of this section applies, the amount determined under subsection (b) of this section.”

Subsec. (e)(3), (4). Pub. L. 100–590, §203(c), added pars. (3) and (4).

Subsec. (g). Pub. L. 100–590, §204, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration’s guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.”

1986—Subsecs. (a), (e)(2). Pub. L. 99–272 substituted “\$1,250,000” for “\$1,000,000”.

1980—Subsec. (c). Pub. L. 96–302 struck out “to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract” after “paid by the surety” in cl. (1).

1978—Subsec. (a). Pub. L. 95–507 amended subsec. (a) generally, striking out requirement that the Administration consult with the Secretary of Housing and Urban Development, and inserting authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95–507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95–507 substituted provisions relating to the limitation of the Administration’s guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95–507 substituted provisions relating to regulations for participating sureties for provisions relating to the application of section 693 of this title in the administration of this section.

Subsecs. (e) to (i). Pub. L. 95–507 added subsecs. (e) to (i).

1974—Subsec. (a). Pub. L. 93-386, §6(a)(3), substituted “\$1,000,000” for “\$500,000”.

Subsec. (c). Pub. L. 93-386, §11, inserted provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-92, div. A, title VIII, §874(c), Nov. 25, 2015, 129 Stat. 941, provided that: “The amendments made by this section [enacting section 9310 of Title 31, Money and Finance, and amending this section] shall take effect 1 year after the date of the enactment of this Act [Nov. 25, 2015].”

TERMINATION DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 to remain in effect until Sept. 30, 2010, see section 508(f) of Pub. L. 111-5, set out as a note under section 694a of this title.

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 1996 AMENDMENT

Pub. L. 104-208, div. D, title II, §206(b), Sept. 30, 1996, 110 Stat. 3009-739, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995.”

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100-590, title II, §207, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101-574, title II, §216(a), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 103-403, title III, §302, Oct. 22, 1994, 108 Stat. 4188; Pub. L. 104-36, §7, Oct. 12, 1995, 109 Stat. 297; Pub. L. 105-135, title V, §503, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106-554, §1(a)(9) [title VIII, §805(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-706, which provided that the provisions contained in section 694b(a)(3) of this title would cease to be effective after Sept. 30, 2003, was repealed by Pub. L. 108-447, div. K, title II, §203(c), Dec. 8, 2004, 118 Stat. 3466.

Pub. L. 100-590, title II, §209, Nov. 3, 1988, 102 Stat. 3010, provided that: “Except as otherwise provided in this title, the provisions of this title [amending this section and section 694c of this title and enacting provisions set out as notes under this section], shall become effective upon expiration of one hundred and eighty days after the date of its enactment [Nov. 3, 1988].”

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.

REGULATIONS

Pub. L. 100-590, title II, §205, Nov. 3, 1988, 102 Stat. 3009, provided that: “The Administration shall promulgate final regulations to implement the amendments made by this title [amending this section and section 694c of this title] not later than one hundred and eighty days after the date of the enactment of this Act [Nov. 3, 1988].”

SMALL BUSINESS ACCESS TO SURETY BONDING SURVEY

Pub. L. 102-366, title III, subtitle A, Sept. 4, 1992, 106 Stat. 1002-1005, known as the Small Business Access to Surety Bonding Survey Act of 1992, directed Com-

troller General to conduct a comprehensive survey of business firms, from a statistically valid sample of business firms developed from the most recent list of construction firms maintained by Dun and Bradstreet Company and using a questionnaire with specifically designated questions, to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms and to submit a report to Congress, not later than 18 months after Sept. 4, 1992, which report was to contain a summary of responses of business firms to the survey and a description of any trends found by Comptroller General in such responses, which specific information on responses and trends of small business concerns, small business concerns owned and controlled by women, and small business concerns owned and controlled by socially and economically disadvantaged individuals.

EVALUATION OF PREFERRED SURETY BOND GUARANTEE PROGRAM; REPORT

Pub. L. 100-590, title II, §206, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101-574, title II, §216(b), Nov. 15, 1990, 104 Stat. 2823, directed Comptroller General, not later than 3 years after Nov. 3, 1988, to transmit a report to Congress evaluating the preferred surety bond guarantee program, with such report to be transmitted not later than Mar. 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.

§ 694c. Revolving fund for surety bond guarantees

(a) There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

(Pub. L. 85-699, title IV, §412, as added Pub. L. 93-386, §6(a)(4), Aug. 23, 1974, 88 Stat. 747; amended Pub. L. 94-305, title I, §113, June 4, 1976, 90 Stat. 667; Pub. L. 95-14, §4, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95-89, title I, §105, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96-302, title I, §111, July 2, 1980, 94 Stat. 837; Pub. L. 100-590, title II, §208, Nov. 3, 1988, 102 Stat. 3009.)

Editorial Notes

AMENDMENTS

1988—Pub. L. 100-590 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96-302 repealed investment of idle funds provision, which is covered in section 694-2 of this title.

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a \$110,000,000 appropriation of capital for the fund; and payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year.

Pub. L. 95-14 substituted “\$110,000,000” for “\$56,500,000”.

1976—Pub. L. 94-305 substituted “\$56,500,000” for “\$35,000,000”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-590 effective on expiration of 180 days after Nov. 3, 1988, see section 209 of Pub. L. 100-590, set out as an Effective and Termination Dates of 1988 Amendment note under section 694b of this title.

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.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as a note under section 633 of this title.

**SUBCHAPTER V—LOANS TO STATE AND
LOCAL DEVELOPMENT COMPANIES**

§ 695. State development companies**(a) Congressional finding and declaration of purpose**

The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this subchapter.

(b) Loans; obligations of development companies

The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) Maximum loans to development companies

The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d) Eligibility for assistance

In order to qualify for assistance under this subchapter, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

(3) the achievement of one or more of the following public policy goals:

(A) business district revitalization,

(B) expansion of exports,

(C) expansion of minority business development or women-owned business development,

(D) rural development,

(E) expansion of small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, especially service-disabled veterans, as defined in such section 632(q) of this title,

(F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

(G) changes necessitated by Federal budget cutbacks, including defense related industries,

(H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,

(I) reduction of energy consumption by at least 10 percent,

(J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact,

(K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers, or

(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e) Creation or retention of jobs

(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$65,000 guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every \$65,000 guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas,