

116TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 116-

MARIJUANA OPPORTUNITY REINVESTMENT AND
EXPUNGEMENT ACT OF 2019

DECEMBER --, 2019.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

VIEWS

[To accompany H.R. 3884]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3884) to decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” or the “MORE Act of 2019”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The communities that have been most harmed by cannabis prohibition are benefiting the least from the legal marijuana marketplace.

(2) A legacy of racial and ethnic injustices, compounded by the disproportionate collateral consequences of 80 years of cannabis prohibition enforcement, now limits participation in the industry.

(3) 33 States, the District of Columbia, Puerto Rico, and Guam have adopted laws allowing legal access to cannabis, and 11 States, the District of Columbia, and the Commonwealth of the Northern Mariana Islands have adopted laws legalizing cannabis for adult recreational use.

(4) A total of 47 States have reformed their laws pertaining to cannabis despite the Schedule I status of marijuana and its Federal criminalization.

(5) Legal cannabis sales totaled \$9.5 billion in 2017 and are projected to reach \$23 billion by 2022.

(6) According to the American Civil Liberties Union (ACLU), enforcing cannabis prohibition laws costs taxpayers approximately \$3.6 billion a year.

(7) The continued enforcement of cannabis prohibition laws results in over 600,000 arrests annually, disproportionately impacting people of color who are almost 4 times more likely to be arrested for cannabis possession than their White counterparts, despite equal rates of use across populations.

(8) People of color have been historically targeted by discriminatory sentencing practices resulting in Black men receiving drug sentences that are 13.1 percent longer than sentences imposed for White men and Latinos being nearly 6.5 times more likely to receive a Federal sentence for cannabis possession than non-Hispanic Whites.

(9) In 2013, simple cannabis possession was the fourth most common cause of deportation for any offense and the most common cause of deportation for drug law violations.

(10) Fewer than one-fifth of cannabis business owners identify as minorities and only approximately 4 percent are black.

(11) Applicants for cannabis licenses are limited by numerous laws, regulations, and exorbitant permit applications, licensing fees, and costs in these States, which can require more than \$700,000.

(12) Historically disproportionate arrest and conviction rates make it particularly difficult for people of color to enter the legal cannabis marketplace, as most States bar these individuals from participating.

(13) Federal law severely limits access to loans and capital for cannabis businesses, disproportionately impacting minority small business owners.

(14) Some States and municipalities have taken proactive steps to mitigate inequalities in the legal cannabis marketplace and ensure equal participation in the industry.

SEC. 3. DECRIMINALIZATION OF CANNABIS.

(a) CANNABIS REMOVED FROM SCHEDULE OF CONTROLLED SUBSTANCES.—

(1) REMOVAL IN STATUTE.—Subsection (c) of schedule I of section 202(c) of the Controlled Substances Act (21 U.S.C. 812) is amended—

(A) by striking “(10) Marihuana.”; and

(B) by striking “(17) Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined in section 297A of the Agricultural Marketing Act of 1946).”.

(2) REMOVAL FROM SCHEDULE.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall finalize a rulemaking under section 201(a)(2) removing marihuana and tetrahydrocannabinols from the schedules of controlled substances. Marihuana and tetrahydrocannabinols shall each be deemed to be a drug or other substance that does not meet the requirements for inclusion in any schedule. A rulemaking under this paragraph shall be considered to have taken effect as of the date of enactment of this Act for purposes of any offense committed, case pending, conviction entered, and, in the case of a juvenile, any offense committed, case pending, and adjudication of juvenile delinquency entered before, on, or after the date of enactment of this Act.

(b) CONFORMING AMENDMENTS TO CONTROLLED SUBSTANCES ACT.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102(44) (21 U.S.C. 802(44)), by striking “marihuana.”;

(2) in section 401(b) (21 U.S.C. 841(b))—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clause (vi), by inserting “or” after the semicolon;

(II) by striking clause (vii); and

(III) by redesignating clause (viii) as clause (vii);

(ii) in subparagraph (B)—

(I) in clause (vi), by inserting “or” after the semicolon;

(II) by striking clause (vii); and

(III) by redesignating clause (viii) as clause (vii);

(iii) in subparagraph (C), in the first sentence, by striking “subparagraphs (A), (B), and (D)” and inserting “subparagraphs (A) and (B)”;

(iv) by striking subparagraph (D);

- (v) by redesignating subparagraph (E) as subparagraph (D); and
 - (vi) in subparagraph (D)(i), as so redesignated, by striking “subparagraphs (C) and (D)” and inserting “subparagraph (C)”;
 - (B) by striking paragraph (4); and
 - (C) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively;
 - (3) in section 402(c)(2)(B) (21 U.S.C. 842(c)(2)(B)), by striking “, marihuana,”;
 - (4) in section 403(d)(1) (21 U.S.C. 843(d)(1)), by striking “, marihuana,”;
 - (5) in section 418(a) (21 U.S.C. 859(a)), by striking the last sentence;
 - (6) in section 419(a) (21 U.S.C. 860(a)), by striking the last sentence;
 - (7) in section 422(d) (21 U.S.C. 863(d))—
 - (A) in the matter preceding paragraph (1), by striking “marijuana,”; and
 - (B) in paragraph (5), by striking “, such as a marihuana cigarette,”; and
 - (8) in section 516(d) (21 U.S.C. 886(d)), by striking “section 401(b)(6)” each place the term appears and inserting “section 401(b)(5)”.
 - (c) OTHER CONFORMING AMENDMENTS.—
 - (1) NATIONAL FOREST SYSTEM DRUG CONTROL ACT OF 1986.—The National Forest System Drug Control Act of 1986 (16 U.S.C. 559b et seq.) is amended—
 - (A) in section 15002(a) (16 U.S.C. 559b(a)) by striking “marijuana and other”;
 - (B) in section 15003(2) (16 U.S.C. 559c(2)) by striking “marijuana and other”; and
 - (C) in section 15004(2) (16 U.S.C. 559d(2)) by striking “marijuana and other”.
 - (2) INTERCEPTION OF COMMUNICATIONS.—Section 2516 of title 18, United States Code, is amended—
 - (A) in subsection (1)(e), by striking “marihuana,”; and
 - (B) in subsection (2) by striking “marihuana”.
 - (d) RETROACTIVITY.—The amendments made by this section to the Controlled Substances Act (21 U.S.C. 801 et seq.) are retroactive and shall apply to any offense committed, case pending, conviction entered, and, in the case of a juvenile, any offense committed, case pending, or adjudication of juvenile delinquency entered before, on, or after the date of enactment of this Act.
- SEC. 4. DEMOGRAPHIC DATA OF CANNABIS BUSINESS OWNERS AND EMPLOYEES.**
- (a) IN GENERAL.—The Bureau of Labor Statistics shall regularly compile, maintain, and make public data on the demographics of—
 - (1) individuals who are business owners in the cannabis industry; and
 - (2) individuals who are employed in the cannabis industry.
 - (b) DEMOGRAPHIC DATA.—The data collected under subsection (a) shall include data regarding—
 - (1) age;
 - (2) certifications and licenses;
 - (3) disability status;
 - (4) educational attainment;
 - (5) family and marital status;
 - (6) nativity;
 - (7) race and Hispanic ethnicity;
 - (8) school enrollment;
 - (9) veteran status; and
 - (10) sex.
 - (c) CONFIDENTIALITY.—The name, address, and other identifying information of individuals employed in the cannabis industry shall be kept confidential by the Bureau and not be made available to the public.
 - (d) DEFINITIONS.—In this section:
 - (1) CANNABIS.—The term “cannabis” means either marijuana or cannabis as defined under the State law authorizing the sale or use of cannabis in which the individual or entity is located.
 - (2) CANNABIS INDUSTRY.—The term “cannabis industry” means an individual or entity that is licensed or permitted under a State or local law to engage in commercial cannabis-related activity.
 - (3) OWNER.—The term “owner” means an individual or entity that is defined as an owner under the State or local law where the individual or business is licensed or permitted.

SEC. 5. CREATION OF OPPORTUNITY TRUST FUND AND IMPOSITION OF TAX ON CANNABIS PRODUCTS.

(a) TRUST FUND.—

(1) ESTABLISHMENT.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 9512. OPPORTUNITY TRUST FUND.

“(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘Opportunity Trust Fund’ (referred to in this section as the ‘Trust Fund’), consisting of such amounts as may be appropriated or credited to such fund as provided in this section or section 9602(b).

“(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 5701(h).

“(c) EXPENDITURES.—Amounts in the Trust Fund shall be available, without further appropriation, only as follows:

“(1) 50 percent to the Attorney General to carry out section 3052(a) of part OO of the Omnibus Crime Control and Safe Streets Act of 1968.

“(2) 10 percent to the Attorney General to carry out section 3052(b) of part OO of the Omnibus Crime Control and Safe Streets Act of 1968.

“(3) 20 percent to the Administrator of the Small Business Administration to carry out section 6(b)(1) of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.

“(4) 20 percent to the Administrator of the Small Business Administration to carry out section 6(b)(2) of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

“Sec. 9512. Opportunity trust fund.”.

(b) IMPOSITION OF TAX.—

(1) IN GENERAL.—Section 5701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) CANNABIS PRODUCTS.—On cannabis products, manufactured in or imported into the United States, there shall be imposed a tax equal to 5 percent of the price for which sold.”.

(2) CANNABIS PRODUCT DEFINED.—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(q) CANNABIS PRODUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘cannabis product’ means any cannabis or any article which contains cannabis or any derivative thereof.

“(2) EXCEPTION.—The term ‘cannabis product’ shall not include any medicine or drug that is a prescribed drug (as such term is defined in section 213(d)(3)).

“(3) CANNABIS.—The term ‘cannabis’—

“(A) means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; and

“(B) does not include—

“(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

“(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.”.

(3) CANNABIS PRODUCTS TREATED AS TOBACCO PRODUCTS.—Section 5702(c) of such Code is amended by striking “and roll-your-own tobacco” and inserting “roll-your-own tobacco, and cannabis products”.

(4) MANUFACTURER OF CANNABIS PRODUCTS TREATED AS MANUFACTURER OF TOBACCO PRODUCTS.—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(r) MANUFACTURER OF CANNABIS PRODUCTS.—

“(1) IN GENERAL.—Any person who plants, cultivates, harvests, produces, manufactures, compounds, converts, processes, prepares, or packages any can-

nabis product shall be treated as a manufacturer of cannabis products (and as manufacturing such cannabis product).

“(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any cannabis product which is for such person’s own personal consumption or use.

“(3) APPLICATION OF RULES RELATED TO MANUFACTURERS OF TOBACCO PRODUCTS.—Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of cannabis products, or to manufacturing cannabis products, respectively.”.

(5) APPLICATION OF CERTAIN RULES FOR DETERMINING PRICE.—Section 5702(l) of such Code is amended—

(A) by striking “section 5701(a)(2)” and inserting “subsections (a)(2) and (h) of section 5701”; and

(B) by inserting “AND CANNABIS PRODUCTS” after “CIGARS” in the heading thereof.

(6) CONFORMING AMENDMENT.—Section 5702(j) of such Code is amended by adding at the end the following new sentence: “In the case of a cannabis product, the previous sentence shall be applied by substituting ‘from a facility of a manufacturer required to file a bond under section 5711’ for ‘from the factory or from internal revenue bond under section 5704’.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to articles manufactured or imported in calendar quarters beginning more than one year after the date of the enactment of this Act.

(2) TRUST FUND.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 6. OPPORTUNITY TRUST FUND PROGRAMS.

(a) CANNABIS JUSTICE OFFICE; COMMUNITY REINVESTMENT GRANT PROGRAM.—

(1) CANNABIS JUSTICE OFFICE.—Part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended by inserting after section 109 the following:

“SEC. 110. CANNABIS JUSTICE OFFICE.

“(a) ESTABLISHMENT.—There is established within the Office of Justice Programs a Cannabis Justice Office.

“(b) DIRECTOR.—The Cannabis Justice Office shall be headed by a Director who shall be appointed by the Assistant Attorney General for the Office of Justice Programs. The Director shall report to the Assistant Attorney General for the Office of Justice Programs. The Director shall award grants and may enter into compacts, cooperative agreements, and contracts on behalf of the Cannabis Justice Office. The Director may not engage in any employment other than that of serving as the Director, nor may the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement.

“(c) EMPLOYEES.—

“(1) IN GENERAL.—The Director shall employ as many full-time employees as are needed to carry out the duties and functions of the Cannabis Justice Office under subsection (d). Such employees shall be exclusively assigned to the Cannabis Justice Office.

“(2) INITIAL HIRES.—Not later than 6 months after the date of enactment of this section, the Director shall—

“(A) hire no less than one-third of the total number of employees of the Cannabis Justice Office; and

“(B) no more than one-half of the employees assigned to the Cannabis Justice Office by term appointment that may after 2 years be converted to career appointment.

“(3) LEGAL COUNSEL.—At least one employee hired for the Cannabis Justice Office shall serve as legal counsel to the Director and shall provide counsel to the Cannabis Justice Office.

“(d) DUTIES AND FUNCTIONS.—The Cannabis Justice Office is authorized to—

“(1) administer the Community Reinvestment Grant Program; and

“(2) perform such other functions as the Assistant Attorney General for the Office of Justice Programs may delegate, that are consistent with the statutory obligations of this section.”.

(2) COMMUNITY REINVESTMENT GRANT PROGRAM.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. et seq.) is amended by adding at the end the following:

“PART OO—COMMUNITY REINVESTMENT GRANT PROGRAM

“SEC. 3052. AUTHORIZATION.

“(a) IN GENERAL.—The Director of the Cannabis Justice Office shall establish and carry out a grant program, known as the ‘Community Reinvestment Grant Program’, to provide eligible entities with funds to administer services for individuals most adversely impacted by the War on Drugs, including—

- “(1) job training;
- “(2) reentry services;
- “(3) legal aid for civil and criminal cases, including expungement of cannabis convictions;
- “(4) literacy programs;
- “(5) youth recreation or mentoring programs;
- “(6) health education programs; and
- “(7) services to address any collateral consequences that individuals or communities face as a result of the War on Drugs.

“(b) SUBSTANCE USE TREATMENT SERVICES.—The Community Reinvestment Grant Program established in subsection (a) shall provide eligible entities with funds to administer substance use treatment services for individuals most adversely impacted by the War on Drugs.

“SEC. 3053. FUNDING FROM OPPORTUNITY TRUST FUND.

“The Director shall carry out the program under this part using funds made available under section 9512(c)(1) and (2) of the Internal Revenue Code.

“SEC. 3054. DEFINITIONS.

“In this part:

“(1) The term ‘cannabis conviction’ means a conviction, or adjudication of juvenile delinquency, for a cannabis offense (as such term is defined in section 13 of the Marijuana Opportunity Reinvestment and Expungement Act of 2019).

“(2) The term ‘substance use treatment’ means an evidence-based, professionally directed, deliberate, and planned regimen including evaluation, observation, medical monitoring, harm reduction, and rehabilitative services and interventions such as pharmacotherapy, mental health services, and individual and group counseling, on an inpatient or outpatient basis, to help patients with substance use disorder reach remission and maintain recovery.

“(3) The term ‘eligible entity’ means a nonprofit organization, as defined in section 501(c)(3) of the Internal Revenue Code, that is representative of a community or a significant segment of a community with experience in providing relevant services to individuals most adversely impacted by the War on Drugs in that community.

“(4) The term ‘individuals most adversely impacted by the War on Drugs’ has the meaning given that term in section 6 of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.”

(b) CANNABIS OPPORTUNITY PROGRAM; EQUITABLE LICENSING GRANT PROGRAM.—

(1) CANNABIS OPPORTUNITY PROGRAM.—The Administrator of the Small Business Administration shall establish and carry out a program, to be known as the “Cannabis Opportunity Program” to provide any eligible State or locality funds to make loans under section 7(m) of the Small Business Act (15 U.S.C. 363(m)) to assist small business concerns owned and controlled by socially and economically disadvantaged individuals, as defined in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)) that operate in the cannabis industry.

(2) EQUITABLE LICENSING GRANT PROGRAM.—The Administrator of the Small Business Administration shall establish and carry out a grant program, to be known as the “Equitable Licensing Grant Program”, to provide any eligible State or locality funds to develop and implement equitable cannabis licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs, provided that each grantee includes in its cannabis licensing program at least four of the following:

(A) A waiver of cannabis license application fees for individuals who have had an income below 250 percent of the Federal Poverty Level for at least 5 of the past 10 years who are first-time applicants.

(B) A prohibition on the denial of a cannabis license based on a conviction for a cannabis offense that took place prior to State legalization of cannabis or the date of enactment of this Act, as appropriate.

(C) A prohibition on criminal conviction restrictions for licensing except with respect to a conviction related to owning and operating a business.

(D) A prohibition on cannabis license holders engaging in suspicionless cannabis drug testing of their prospective or current employees, except with respect to drug testing for safety-sensitive positions, as defined under the Omnibus Transportation Testing Act of 1991.

(E) The establishment of a cannabis licensing board that is reflective of the racial, ethnic, economic, and gender composition of the State or locality, to serve as an oversight body of the equitable licensing program.

(3) DEFINITIONS.—In this subsection:

(A) The term “individual most adversely impacted by the War on Drugs” means an individual—

(i) who has had an income below 250 percent of the Federal Poverty Level for at least 5 of the past 10 years; and

(ii) has been arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis or a controlled substance (except for a conviction involving distribution to a minor), or whose parent, sibling, spouse, or child has been arrested for or convicted of such an offense.

(B) The term “eligible State or locality” means a State or locality that has taken steps to—

(i) create an automatic process, at no cost to the individual, for the expungement, destruction, or sealing of criminal records for cannabis offenses; and

(ii) eliminate violations or other penalties for persons under parole, probation, pre-trial, or other State or local criminal supervision for a cannabis offense.

(C) The term “State” means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any Indian Tribe (as defined in section 201 of Public Law 90–294 (25 U.S.C. 1301) (commonly known as the “Indian Civil Rights Act of 1968”)).

SEC. 7. AVAILABILITY OF SMALL BUSINESS ADMINISTRATION PROGRAMS AND SERVICES TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.

(a) DEFINITIONS RELATING TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

“(ff) CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—In this Act:

“(1) CANNABIS.—The term ‘cannabis’—

“(A) means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; and

“(B) does not include—

“(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

“(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

“(2) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term ‘cannabis-related legitimate business’ means a manufacturer, producer, or any person or company that is a small business concern and that—

“(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State, as determined by such State or political sub-division; and

“(B) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, man-

ufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

“(3) SERVICE PROVIDER.—The term ‘service provider’—

“(A) means a business, organization, or other person that—

“(i) sells goods or services to a cannabis-related legitimate business;

or

“(ii) provides any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis; and

“(B) does not include a business, organization, or other person that participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.”

(b) SMALL BUSINESS DEVELOPMENT CENTERS.—Section 21(c) of the Small Business Act (15 U.S.C. 648(c)) is amended by adding at the end the following new paragraph:

“(9) SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—A small business development center may not decline to provide services to an otherwise eligible small business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.”

(c) WOMEN’S BUSINESS CENTERS.—Section 29 of the Small Business Act (15 U.S.C. 656) is amended by adding at the end the following new subsection:

“(p) SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—A women’s business center may not decline to provide services to an otherwise eligible small business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.”

(d) SCORE.—Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) is amended by adding at the end the following new sentence: “The head of the SCORE program established under this subparagraph may not decline to provide services to an otherwise eligible small business concern solely because such concern is a cannabis-related legitimate business or service provider.”

(e) VETERAN BUSINESS OUTREACH CENTERS.—Section 32 of the Small Business Act (15 U.S.C. 657b) is amended by adding at the end the following new subsection:

“(h) SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—A Veteran Business Outreach Center may not decline to provide services to an otherwise eligible small business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.”

(f) 7(a) LOANS.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

“(36) LOANS TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—The Administrator may not decline to provide a guarantee for a loan under this subsection to an otherwise eligible small business concern solely because such concern is a cannabis-related legitimate business or service provider.”

(g) DISASTER LOANS.—Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting after paragraph (15) the following new paragraph:

“(16) ASSISTANCE TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—The Administrator may not decline to provide assistance under this subsection to an otherwise eligible borrower solely because such borrower is a cannabis-related legitimate business or service provider.”

(h) MICROLOANS.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended by adding at the end the following new paragraph:

“(14) ASSISTANCE TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—An eligible intermediary may not decline to provide assistance under this subsection to an otherwise eligible borrower solely because such borrower is a cannabis-related legitimate business or service provider.”

(i) STATE OR LOCAL DEVELOPMENT COMPANY LOANS.—Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is amended by adding at the end the following new section:

“SEC. 511. LOANS TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.

“The Administrator may not decline to provide a guarantee for a loan under this title to an otherwise eligible State or local development company solely because such State or local development company provides financing to an entity that is a can-

nabis-related legitimate business or service provider (as defined in section 3(ff) of the Small Business Act).”.

SEC. 8. NO DISCRIMINATION IN THE PROVISION OF A FEDERAL PUBLIC BENEFIT ON THE BASIS OF CANNABIS.

(a) **IN GENERAL.**—No person may be denied any Federal public benefit (as such term is defined in section 401(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c))) on the basis of any use or possession of cannabis, or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense, by that person.

(b) **SECURITY CLEARANCES.**—Federal agencies may not use past or present cannabis or marijuana use as criteria for granting, denying, or rescinding a security clearance.

SEC. 9. NO ADVERSE EFFECT FOR PURPOSES OF THE IMMIGRATION LAWS.

(a) **IN GENERAL.**—For purposes of the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act), cannabis may not be considered a controlled substance, and an alien may not be denied any benefit or protection under the immigration laws based on any event, including conduct, a finding, an admission, addiction or abuse, an arrest, a juvenile adjudication, or a conviction, relating to cannabis, regardless of whether the event occurred before, on, or after the effective date of this Act.

(b) **CANNABIS DEFINED.**—The term “cannabis”—

(1) means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; and

(2) does not include—

(A) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(B) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(c) **CONFORMING AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.**—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) in section 212(h), by striking “and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana”;

(2) in section 237(a)(2)(B)(i), by striking “other than a single offense involving possession for one’s own use of 30 grams or less of marijuana”;

(3) in section 101(f)(3), by striking “(except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana)”;

(4) in section 244(c)(2)(A)(iii)(II) by striking “except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana”;

(5) in section 245(h)(2)(B) by striking “(except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana)”;

(6) in section 210(c)(2)(B)(ii)(III) by striking “, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana”; and

(7) in section 245A(d)(2)(B)(ii)(II) by striking “, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana”.

SEC. 10. RESENTENCING AND EXPUNGEMENT.

(a) **EXPUNGEMENT OF FEDERAL CANNABIS OFFENSE CONVICTIONS FOR INDIVIDUALS NOT UNDER A CRIMINAL JUSTICE SENTENCE.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, each Federal district shall conduct a comprehensive review and issue an order expunging each conviction or adjudication of juvenile delinquency for a Federal cannabis offense entered by each Federal court in the district before the date of enactment of this Act and on or after May 1, 1971. Each Federal court shall also issue an order expunging any arrests associated with each expunged conviction or adjudication of juvenile delinquency.

(2) NOTIFICATION.—To the extent practicable, each Federal district shall notify each individual whose arrest, conviction, or adjudication of delinquency has been expunged pursuant to this subsection that their arrest, conviction, or adjudication of juvenile delinquency has been expunged, and the effect of such expungement.

(3) RIGHT TO PETITION COURT FOR EXPUNGEMENT.—At any point after the date of enactment of this Act, any individual with a prior conviction or adjudication of juvenile delinquency for a Federal cannabis offense, who is not under a criminal justice sentence, may file a motion for expungement. If the expungement of such a conviction or adjudication of juvenile delinquency is required pursuant to this Act, the court shall expunge the conviction or adjudication, and any associated arrests. If the individual is indigent, counsel shall be appointed to represent the individual in any proceedings under this subsection.

(4) SEALED RECORD.—The court shall seal all records related to a conviction or adjudication of juvenile delinquency that has been expunged under this subsection. Such records may only be made available by further order of the court.

(b) SENTENCING REVIEW FOR INDIVIDUALS UNDER A CRIMINAL JUSTICE SENTENCE.—

(1) IN GENERAL.—For any individual who is under a criminal justice sentence for a Federal cannabis offense, the court that imposed the sentence shall, on motion of the individual, the Director of the Bureau of Prisons, the attorney for the Government, or the court, conduct a sentencing review hearing. If the individual is indigent, counsel shall be appointed to represent the individual in any sentencing review proceedings under this subsection.

(2) POTENTIAL REDUCED RESENTENCING.—After a sentencing hearing under paragraph (1), a court shall—

(A) expunge each conviction or adjudication of juvenile delinquency for a Federal cannabis offense entered by the court before the date of enactment of this Act, and any associated arrest;

(B) vacate the existing sentence or disposition of juvenile delinquency and, if applicable, impose any remaining sentence or disposition of juvenile delinquency on the individual as if this Act, and the amendments made by this Act, were in effect at the time the offense was committed; and

(C) order that all records related to a conviction or adjudication of juvenile delinquency that has been expunged or a sentence or disposition of juvenile delinquency that has been vacated under this Act be sealed and only be made available by further order of the court.

(c) EFFECT OF EXPUNGEMENT.—An individual who has had an arrest, a conviction, or juvenile delinquency adjudication expunged under this section—

(1) may treat the arrest, conviction, or adjudication as if it never occurred; and

(2) shall be immune from any civil or criminal penalties related to perjury, false swearing, or false statements, for a failure to disclose such arrest, conviction, or adjudication.

(d) DEFINITIONS.—In this section:

(1) The term “Federal cannabis offense” means an offense that is no longer punishable pursuant to this Act or the amendments made under this Act.

(2) The term “expunge” means, with respect to an arrest, a conviction, or a juvenile delinquency adjudication, the removal of the record of such arrest, conviction, or adjudication from each official index or public record.

(3) The term “under a criminal justice sentence” means, with respect to an individual, that the individual is serving a term of probation, parole, supervised release, imprisonment, official detention, pre-release custody, or work release, pursuant to a sentence or disposition of juvenile delinquency imposed on or after the effective date of the Controlled Substances Act (May 1, 1971).

(e) STUDY.—The Comptroller General of the United States, in consultation with the National Institute on Drug Abuse, shall conduct a demographic study of individuals convicted of a Federal cannabis offense. Such study shall include information about the age, race, ethnicity, sex, and gender identity of those individuals, the type of community such users dwell in, and such other demographic information as the Comptroller General determines should be included.

(f) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall report to Congress the results of the study conducted under subsection (e).

SEC. 11. REFERENCES IN EXISTING LAW TO MARIJUANA OR MARIHUANA.

Wherever, in the statutes of the United States or in the rulings, regulations, or interpretations of various administrative bureaus and agencies of the United States—

- (1) there appears or may appear the term “marihuana” or “marijuana”, that term shall be struck and the term “cannabis” shall be inserted; and
- (2) there appears or may appear the term “Marihuana” or “Marijuana”, that term shall be struck and the term “Cannabis” shall be inserted.

SEC. 12. SEVERABILITY.

If any provision of this Act or an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of this Act and the amendments made by this Act to any other person or circumstance shall not be affected.

SEC. 13. CANNABIS OFFENSE DEFINED.

For purposes of this Act, the term “cannabis offense” means a criminal offense related to cannabis—

- (1) that, under Federal law, is no longer punishable pursuant to this Act or the amendments made under this Act; or
- (2) that, under State law, is no longer an offense or that was designated a lesser offense or for which the penalty was reduced under State law pursuant to or following the adoption of a State law authorizing the sale or use of cannabis.

SEC. 14. RULEMAKING.

Unless otherwise provided in this Act, not later than 1 year after the date of enactment of this Act, the Department of the Treasury, the Department of Justice, and the Small Business Administration shall issue or amend any rules, standard operating procedures, and other legal or policy guidance necessary to carry out implementation of this Act. After the 1-year period, any publicly issued sub-regulatory guidance, including any compliance guides, manuals, advisories and notices, may not be issued without 60-day notice to appropriate congressional committees. Notice shall include a description and justification for additional guidance.

SEC. 15. SOCIETAL IMPACT OF MARIJUANA LEGALIZATION STUDY.

The Comptroller General of the United States shall, not later than 2 years after the date of enactment of this Act, provide to Congress a study that addresses the societal impact of the legalization of recreational cannabis by States, including—

- (1) sick days reported to employers;
- (2) workers compensations claims;
- (3) tax revenue remitted to States resulting from legal marijuana sales;
- (4) changes in government spending related to enforcement actions and court proceedings;
- (5) Federal welfare assistance applications;
- (6) rate of arrests related to methamphetamine possession;
- (7) hospitalization rates related to methamphetamine and narcotics use;
- (8) uses of marijuana and its byproducts for medical purposes;
- (9) arrest rates of individuals driving under the influence or driving while intoxicated by marijuana;
- (10) traffic-related deaths and injuries where the driver is impaired by marijuana;
- (11) arrest of minors for marijuana-related charges;
- (12) violent crime rates;
- (13) school suspensions, expulsions, and law enforcement referrals that are marijuana-related;
- (14) high school dropout rates;
- (15) changes in district-wide and State-wide standardized test scores;
- (16) marijuana-related hospital admissions and poison control calls;
- (17) marijuana-related juvenile admittances into substance rehabilitation facilities and mental health clinics;
- (18) diversion of marijuana into neighboring States and drug seizures in neighboring States;
- (19) marijuana plants grown on public lands in contravention to Federal and State laws; and
- (20) court filings under a State’s organized crime statutes.

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PURPOSE AND SUMMARY

H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019,” or “MORE Act of 2019” would (1) remove marijuana, or cannabis, from the list of substances controlled under the Controlled Substances Act (CSA); (2) create an Opportunity Trust Fund to be funded through an excise tax on the sale of cannabis products; (3) create a Cannabis Justice Office within the Department of Justice (DOJ) to administer a Community Reinvestment Grant Program to fund nonprofits that provide services to individuals most adversely impacted by the War on Drugs; (4) create a Cannabis Opportunity Program within the Small Business Administration (SBA) to provide eligible states and localities with funds for loans to business concerns owned and controlled by socially and economically disadvantaged individuals and an Equitable Licensing Program, also within SBA, to provide funds to eligible states and localities for developing cannabis licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs; (5) ensure that SBA

programs and services are made available to cannabis-related legitimate businesses and service providers; (6) provide for the expungement of Federal cannabis arrests and offenses, vacatur and sealing of cannabis offenses and for resentencing hearings, where appropriate; (7) protect individuals from discrimination in the provision of public benefits on the basis of use, possession, or convictions or juvenile adjudications for cannabis offenses; and (8) prohibit consideration of cannabis as a controlled substance for purposes of the immigration laws.

BACKGROUND AND NEED FOR THE LEGISLATION

1. Overview

Marijuana (or cannabis), as defined in the Controlled Substances Act (CSA),¹ includes “all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.”² The CSA definition of marijuana exempts cannabis plant material that falls into four categories—mature stalks, fiber produced from mature stalks, oil or cake made from seeds, and seeds incapable of germination—as well as “any other compound, manufacture, salt, derivative, mixture, or preparation” of the exempt plant material.³ In addition, the Agriculture Improvement Act of 2018⁴ explicitly exempted hemp from the definition of marijuana under the CSA.⁵

Cannabis is a complex plant, consisting of two major compounds, delta-9-

¹ 21 U.S.C. §§ 801 *et seq.* (2019).

² 21 U.S.C. § 802(16)(A) (2019). In different parts of the U.S. Code, including the CSA, marijuana is referred to as “marihuana.”

³ 21 U.S.C. § 802(16)(B)(ii) (2019).

⁴ Pub. L. No. 115-334, 132 Stat. 4490 (2018).

⁵ 21 U.S.C. § 802(16)(B)(i) (2019).

tetrahydrocannabinol (commonly known as THC) and cannabidiol (commonly known as CBD), which produce opposing effects on individuals.⁶ THC is the main psychoactive ingredient in cannabis⁷ and is the component that produces the feeling of being “high.” THC can account for as much as 40% of the total cannabinoid content in marijuana.⁸ Hemp, by contrast is defined in the CSA as cannabis and cannabis derivatives with very low concentrations (no more than 0.3% on a dry weight basis) of THC.⁹ Hemp is rich in CBD and generally contains only 0.3% of THC or less.¹⁰

The current federal statutory scheme relative to marijuana comes from the CSA. The CSA makes it unlawful to manufacture, import, possess, use, and distribute the substances it regulates, including marijuana. States have also historically prohibited marijuana use, although in the last two decades there has been a trend towards state legalization. In 1996, California became the first state to legalize medical cannabis with the approval of Proposition 215.¹¹ At the present time, 33 states and the District of Columbia have legalized medical cannabis.¹² In 2012, Colorado and Washington became the first two states to legalize the recreational use of cannabis, following the passage of Amendment 64 and Initiative 502, respectively.¹³ At this time, 11 states

⁶ Zerrin Atakan, *Cannabis, a Complex Plant: Different Compounds and Different Effects on Individuals*, THERAPEUTIC ADVANCES IN PSYCHOPHARMACOLOGY (Dec. 2012), at 241, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3736954/>.

⁷ *Id.* at 245.

⁸ Timothy Williams, *CBD is Wildly Popular. Disputes Over Its Legality Are a Growing Source of Legal Tension*, N.Y. TIMES (May 6, 2019), <https://www.nytimes.com/2019/05/06/us/cbd-cannabis-marijuana-hemp.html>.

⁹ 7 U.S.C. § 1639o(2019).

¹⁰ Williams, *supra* note 8.

¹¹ John Balzar, *Voters Approve Measure to Use Pot as Medicine*, L.A. TIMES (Nov. 6, 1996), available at <https://www.latimes.com/archives/la-xpm-1996-11-06-mn-62740-story.html>.

¹² The 33 states are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, and West Virginia.

¹³ Keith Coffman & Nicole Neroulis, *Colorado, Washington first states to legalize recreational pot*, REUTERS

and the District of Columbia have legalized cannabis for adult recreational use.¹⁴ In addition, the U.S. territories of Guam,¹⁵ the Northern Mariana Islands,¹⁶ Puerto Rico,¹⁷ and the U.S. Virgin Islands¹⁸ have legalized marijuana for medical or recreational purposes. The legalization of cannabis at the state level, whether for medical or recreational use, has in many instances put state laws in apparent conflict with federal statutes that broadly proscribe the possession or use of marijuana.

The CSA is Title II of the Comprehensive Drug Abuse Prevention and Control Act.¹⁹ At the time of its passage, in 1970, President Nixon sent a message to Congress declaring drug abuse “public enemy number one” and announcing a “new, all-out offensive.”²⁰ This offensive came to be known as the “War on Drugs.”

The CSA directed the President to establish a Commission on Marijuana and Drug Abuse and issue a study report.²¹ Among other things, the Commission’s first report concluded that

(Nov. 6, 2012), <https://www.reuters.com/article/us-usa-marijuana-legalization/colorado-washington-first-states-to-legalize-recreational-pot-idUSBRE8A602D20121107>.

¹⁴ The 11 states are: Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington.

¹⁵ See Christopher Ingraham, *Medical Marijuana Advocates Notch an Early Victory in Guam*, WASH. POST (Nov. 4, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/11/04/medical-marijuana-advocates-notch-an-early-victory-in-guam/>.

¹⁶ See Tom Angell, *Governor Signs Marijuana Legalization Bill, Making History in U.S. Territory*, FORBES (Sep. 21, 2018), <https://www.forbes.com/sites/tomangell/2018/09/21/governor-signs-marijuana-legalization-bill-making-history-in-us-territory/#1709d6dc27ea>.

¹⁷ Alexandra Sifferlin, *Puerto Rico Governor Signs Executive Order to Legalize Medical Marijuana*, TIME (May 4, 2015), <https://time.com/3845638/puerto-rico-medical-marijuana/>.

¹⁸ Kyle Jaeger, *Governor Signs Bill Legalizing Medical Marijuana in the U.S. Virgin Islands*, MARIJUANA MOMENT (Jan. 19, 2019), <https://www.marijuanamoment.net/governor-signs-bill-legalizing-medical-marijuana-in-the-u-s-virgin-islands/>.

¹⁹ See Pub. L. No. 91-513, 84 Stat. 1242 (1970).

²⁰ Conor Friedersdorf, *The War on Drugs Turns 40*, THE ATLANTIC (June 15, 2011), <https://www.theatlantic.com/politics/archive/2011/06/the-war-on-drugs-turns-40/240472/>.

²¹ See Pub. L. No. 91-513, 84 Stat. 1280-81, § 601 (1970).

criminalization was “too harsh a tool to apply to personal possession even in the effort to discourage use,” and that “the actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance.”²² Although the Nixon Administration dismissed these recommendations at the federal level, during the mid-1970s virtually all states softened their penalties for marijuana possession.²³ Despite some relaxation at the state level, in 1973, President Nixon created the Drug Enforcement Agency, within the Department of Justice, to establish a single federal agency to enforce federal drug laws and to consolidate and coordinate the government’s drug control activities.²⁴

The CSA established a “scheduling” system, through which the federal government regulates the lawful production, possession and distribution of controlled substances. Placement on each of the five schedules is based upon the substance’s medical use, potential for abuse, and safety or dependence liability. Marijuana was initially placed, and today remains, on Schedule I.²⁵ THC is also on Schedule I.²⁶ By virtue of their placement on Schedule I, marijuana and THC have been deemed by the federal government to have: (1) a high potential for abuse; (2) no currently accepted medical use in treatment in the United States; and (3) a lack of accepted safety for use under medical supervision.²⁷ Because of this, Schedule I substances may not be dispensed under a prescription, and such substances may only be used for bona fide, federal

²² NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING—THE OFFICIAL REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE 176 (1972).

²³ Brent Staples, *The Federal Marijuana Ban is Rooted in Myth and Xenophobia*, N.Y. TIMES (July 29, 2014), <https://www.nytimes.com/2014/07/30/opinion/high-time-federal-marijuana-ban-is-rooted-in-myth.html>.

²⁴ See <https://www.dea.gov/history>.

²⁵ See 21 U.S.C. § 812(c)(c)(10) (2019).

²⁶ 21 U.S.C. § 812(c)(c)(17) (2019).

²⁷ 21 U.S.C. § 812(b)(1) (2019).

government-approved research studies.²⁸

Individuals who want to conduct research on marijuana must do so in accordance with the CSA and other federal laws. If availability of a controlled substance is sought for purposes of research, the researcher must obtain a registration issued by the DEA.²⁹ There are strict storage requirements with which all registrants are expected to comply.³⁰ Since passage of the CSA, the DEA has issued only one license for the cultivation of marijuana for research, to the University of Mississippi.³¹ The University of Mississippi's application was renewed in 2015,³² but no other applications have been approved by the DEA, despite a stalled effort towards the end of the Obama Administration to increase the number of suppliers of marijuana for research purposes.³³

During the 1980s, Congress and President Ronald Reagan enacted many mandatory minimum penalties and increased the length of existing penalties, particularly for drug and

²⁸ 21 U.S.C. § 823(f) (2019). Under the CSA, only DEA-licensed doctors are allowed to prescribe controlled substances listed in Schedules II-V to patients. *See* 21 C.F.R. § 1306.03 (persons entitled to issue prescriptions). Federal regulations stipulate that a lawful prescription for a controlled substance may only be “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 C.F.R. § 1306.04.

²⁹ *See* 21 U.S.C. § 822; *see also* 21 C.F.R. § 1301.11(a) (“Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22 through 1301.26.”).

³⁰ All applicants and registrants must “provide effective controls and procedures to guard against theft and diversion of controlled substances.” 21 C.F.R. § 1301.71.

³¹ National Institute on Drug Abuse, *NIDA's Role in Providing Marijuana for Research*, available at <https://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research>.

³² *Id.*

³³ Andrew Joseph, *DEA Solicited Applications to Grow Marijuana for Research. It Hasn't Approved One*, STAT (July 24, 2017), <https://www.statnews.com/2017/07/24/dea-marijuana-licenses-research/>. In August of 2016, the DEA had announced the adoption of a new policy “designed to increase the number of entities registered under the Controlled Substances Act (CSA) to grow (manufacture) marijuana to supply legitimate researchers in the United States.” Applications to Become Registered Under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States, 81 Fed. Reg. 53,846 (Aug. 12, 2016) (codified at 21 C.F.R. pt. 1301).

violent felonies.³⁴ The Reagan Administration also launched the “Just Say No” campaign against drug use and enforced a “zero tolerance” policy in relation to drugs.³⁵ Congress created the U.S. Sentencing Commission during this time period, as part of the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984,³⁶ to establish sentencing policies and practices for the federal courts, “including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes.”³⁷ The Sentencing Commission began to develop Guidelines that operated by establishing a mandatory minimum term of imprisonment where none had existed before,³⁸ but Congress also began to reenact mandatory minimums, many of which were put in place through the Anti-Drug Abuse Act of 1986.³⁹

The Anti-Drug Abuse Act of 1986 set forth the basic framework of mandatory minimum penalties for federal drug trafficking offenses. The Act established quantities that triggered those mandatory minimum penalties, which ranged from five years to life imprisonment, and differed for various drugs.⁴⁰ Congress expedited passage of the Act after an uptick in the incidence of drug use and trafficking, as well as the June 1986 overdose death of the Boston Celtics’ first-

³⁴ See U.S. SENTENCING COMM’N, 2011 REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE CRIMINAL JUSTICE SYSTEM 23 (2011).

³⁵ See Michael McGrath, *Nancy Reagan and the Negative Impact of the ‘Just Say No’ Anti-Drug Campaign*, THE GUARDIAN (Mar. 8, 2016), <https://www.theguardian.com/society/2016/mar/08/nancy-reagan-drugs-just-say-no-dare-program-opioid-epidemic>.

³⁶ Pub. L. No. 98-473, 98 Stat. 1837, 1987 (1984).

³⁷ U.S. Sentencing Comm’n, *Mission*, available at <https://www.ussc.gov/about-page>.

³⁸ See 18 U.S.C. § 3553(b)(1) (provision severed and excised by *United States v. Booker*, 543 U.S. 220 (2005)).

³⁹ Pub. L. No. 99-570, 100 Stat. 3207 (1986). The Act established mandatory minimums in 21 U.S.C. §§ 841 (possession with intent to distribute controlled substances); 844 (simple possession); 845 (distribution to a person under 21 years of age); 845a (distribution near a school); 845b (use of a child in a drug operation); 960 (controlled substance import or export offenses); and in 18 U.S.C. § 924(e) (adding drug offenses to the Armed Career Criminal Act’s predicate offense list).

⁴⁰ Pub. L. No. 99-570, 100 Stat. 3207-2 (1984).

round pick, Len Bias.⁴¹ Because of heightened concern and the national sense of urgency, Congress bypassed much of its usual deliberative process in relation to the Anti-Drug Abuse Act; Congress held no committee hearings and produced no reports.⁴²

The Anti-Drug Abuse Act established mandatory minimums of ten years for possessing with intent to distribute, importing, or exporting 1000 kilograms or more of a mixture or substance containing a detectable amount of marijuana, and five years for possessing with intent to distribute, importing, or exporting 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana.⁴³ In addition, the Act established that a person convicted of possessing with intent to distribute, importing, or exporting a controlled substance in Schedule I (including marijuana) could be sentenced to up to 20 years in prison.⁴⁴

The current federal statutory scheme prohibits the cultivation or distribution of marijuana, or the possession of marijuana with the intent to distribute, as well as the importation and exportation of marijuana.⁴⁵ Marijuana offenses involve some of the same mandatory minimums as were mandated by Congress in the Anti-Drug Abuse Act (ten years⁴⁶ and five years,⁴⁷ depending on the amount at issue, and higher mandatory minimums ranging from 15 years to life

⁴¹ 2011 REPORT TO THE CONGRESS, *supra*, note 34, at 23.

⁴² *Id.* at 23-24; *see, e.g.*, 132 CONG. REC. 26,436 (Sep. 26, 1986) (statement of Sen. Hawkins) (“Drugs pose a clear and present danger to America’s national security. If for no other reason we should be addressing this on an emergency basis.”).

⁴³ Pub. L. No. 99-570, 100 Stat. 3207-2 and 3207-15 (1986). The Act established additional mandatory minimums of 10 years, 20 years and life imprisonment depending on whether death or serious bodily injury resulted from use of the drug or whether the offense was committed following a prior felony drug conviction. *See id.*

⁴⁴ Pub. L. No. 99-570, 100 Stat. 3207-4 and 3207-17 (1986). With a drug prior, the maximum sentence increased to 30 years. *Id.* If death or bodily injury resulted from use of the substance, the Act mandated a mandatory minimum term of 20 years, and, with a drug prior, a sentence of life in prison. *Id.*

⁴⁵ *See* 21 U.S.C. §§ 841(b)(1)(A)-(D) and 960(b)(1)-(4) (2019).

⁴⁶ This mandatory minimum now includes the possession of “1,000 or more marihuana plants, regardless of weight.” *See* 21 U.S.C. § 841(b)(1)(A)(vii) (2019).

⁴⁷ This mandatory minimum now includes the possession of “100 or more marihuana plants, regardless of weight.” *See* 21 U.S.C. § 841(b)(1)(B)(vii) (2019).

in prison, depending on recidivism and whether death or serious bodily injury resulted).⁴⁸

The mere possession of marijuana, without intent to distribute, is generally a misdemeanor subject to up to one year of imprisonment.⁴⁹ A violation of this federal “simple possession” statute after a single prior conviction under any federal or state drug law triggers a mandatory minimum imprisonment term of 15 days (up to a maximum of two years) and this increases to a minimum of 90 days (and a maximum of three years) with multiple prior drug convictions.⁵⁰ In a case concerning less than 50 kilograms of marijuana, a person can be subject to up to five years of imprisonment.⁵¹

Pursuant to the CSA, the federal government prosecutes a large number of drug trafficking offenses. In fiscal year 2018, there were 69,425 cases reported to the United States Sentencing Commission.⁵² Of these, 18,964 cases involved drug trafficking, and 11.5% of the cases involving drug trafficking involved marijuana.⁵³ In fiscal year 2018, there were 2,190 marijuana trafficking offenders, which represents a decrease of 44.9% from the 3,973 offenders in fiscal year 2014.⁵⁴ The vast majority of marijuana trafficking offenders were men, at 86.8%, in fiscal year 2018.⁵⁵ Over half (53.3%) were United States citizens.⁵⁶ Almost three-quarters of

⁴⁸ See 21 U.S.C. §§ 841(b)(1)(A)-(B); 960(b)(1)-(2) (2019); see also 21 U.S.C. § 851 (2019) (provides a procedure for a government filing seeking an enhanced penalty for a drug offender previously convicted of a “felony drug offense”).

⁴⁹ 21 U.S.C. § 844(a) (2019).

⁵⁰ *Id.*

⁵¹ 21 U.S.C. § 841(b)(1)(D) (2019).

⁵² U.S. Sentencing Comm’n, *Quick Facts: Marijuana Trafficking Offenses*, at 1, https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY18.pdf. In fiscal year 2017, the federal government prosecuted 776 drug-possession cases; 571 of these cases were marijuana-possession prosecutions. U.S. Sentencing Comm’n, 2018 Fiscal Year Datafiles, USSCFY18.

⁵³ 2017 *Quick Facts*, at 1.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

marijuana trafficking offenders prosecuted in federal court in fiscal year 2018 were Hispanic, or Latino (71.9%), and 11.5% were White, 12.3% were Black, and 4.3% were offenders from other races.⁵⁷ Ninety-one percent of offenders (91.1%) were sentenced to prison, with the average sentence being 29 months.⁵⁸ Almost thirty-two percent (31.8%) of marijuana trafficking offenders were convicted of an offense carrying a mandatory minimum, although 63.64% were not subject to a mandatory minimum because either they were eligible for a “safety valve” reduction, they gave substantial assistance to the government, or both.⁵⁹ This represents a one-year increase of over six percentage points; in fiscal year 2017, the percentage of marijuana trafficking offenders convicted of an offense carrying a mandatory minimum penalty was 25.6%.⁶⁰

The Federal Bureau of Investigation reports that in 2018 there were a total of 1,654,282 arrests for all drug offenses reported in the United States,⁶¹ of which 13.6% were for the sale or manufacture of any drug and, of these, 3.3% --or approximately 7,424 arrests--were for marijuana.⁶² In 2018, the percentage of drug possession arrests relative to arrests for all drug offenses was 86.4%; of these, 36.8% --or approximately 525,982 arrests--were for marijuana.⁶³

At the same time as the federal government continues to maintain marijuana’s placement

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ U.S. Sentencing Comm’n, *Quick Facts: Marijuana Trafficking Offenses*, at 1, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY17.pdf.

⁶¹ See Federal Bureau of Investigation, Uniform Crime Report, *2018 Crime in the United States*, Estimated Number of Arrests, United States, 2018 (Table 29), <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-29>.

⁶² See *id.*, Arrests for Drug Abuse Violations, Percent Distribution by Region, 2018 (Arrest Table), Federal Bureau of Investigation, Uniform Crime Report, *2018 Crime in the United States*, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/arrest-table.xls>.

⁶³ See *id.*

as a controlled substance on Schedule I, the majority of states and the District of Columbia have established laws and policies authorizing the medical or recreational use of marijuana, as noted above.⁶⁴

The possession, cultivation, or distribution of marijuana, however, remains a *federal* crime within every state that has legalized it. As a result, a person who grows, possesses, uses, sells, transports, or distributes marijuana, even if done in a way that is consistent with state law or authorized by a state license, is nonetheless in violation of the CSA and remains subject to federal prosecution. In addition, because marijuana is still a federally-controlled substance, the application of various money laundering and banking laws has hampered the ability of commercial marijuana establishments to obtain the necessary financing and financial services to establish and grow their businesses.⁶⁵

2. Impact on Minority Communities

As noted above, cannabis policies with a disproportionate impact on minority communities began to be implemented in the early part of the 20th century. Beginning in the 1960s, national policies emphasized a law enforcement-focused approach that exacerbated problems in cities throughout the country.⁶⁶ The War on Drugs amplified these problems by distorting the statistics that tied drug addiction to instances of crime.⁶⁷ The national conversation thus shifted away from eradicating the causes of crime and focused it on punishing the

⁶⁴ See *supra* notes 11-18.

⁶⁵ See generally *Easier Pot Policy Won't Relieve Dispensaries' Banking Woes*, REUTERS (Sep. 5, 2013), <https://www.cnbc.com/id/101011966>; Serge F. Kovalski, *Banks Say No to Marijuana Money, Legal or Not*, N.Y. TIMES (Jan. 11, 2014), <https://www.nytimes.com/2014/01/12/us/banks-say-no-to-marijuana-money-legal-or-not.html>.

⁶⁶ See Emily Dufton, *The War on Drugs: How President Nixon Tied Addiction to Crime*, THE ATLANTIC (Mar. 26, 2012), <https://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>.

⁶⁷ *Id.*

criminal.⁶⁸ This had the dual effect of exonerating the white middle class from responsibility for the drug-related violence being experienced in the inner city and transforming the public image of the drug user into a dangerous threat.⁶⁹ “Shifting public perception in this way ultimately served to reinforce the ‘necessity’ of Nixon’s drug war. Once addicts were no longer seen as sick victims of a society that systematically excluded them, no one would mind when they were simply locked up. In fact, incarceration was for the nation’s *own good*.”⁷⁰ This “lock them up” mentality continued through the 1980s and 1990s.⁷¹

Enforcement of marijuana laws has been a key driver of mass criminalization in the United States. As noted above, in 2018, there were over 533,400 marijuana-related arrests.⁷² Of these, almost 526,000 were arrests for marijuana possession.⁷³ The drug war has produced profoundly unequal outcomes across racial groups, manifested through significant racial disparities throughout the criminal justice system.

The higher arrest and incarceration rates for communities of color do not reflect a greater prevalence of drug use, but rather the focus on law enforcement on urban areas, lower income communities, and communities of color.⁷⁴ In fact, nearly 80% of people in federal prison and almost 60% of people in state prison for drug offenses are black or Latino.⁷⁵ In its seminal 2013 report, “The War on Marijuana in Black and White,” the American Civil Liberties Union found:

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *Id.* (emphasis in original).

⁷¹ Matthew Yglesias, *The Real Reason Mass Incarceration Happened*, VOX (Apr. 11, 2016), <https://www.vox.com/2016/4/11/11399870/mass-incarceration-cause>.

⁷² *See supra* notes 62 and 63.

⁷³ *See supra* note 63.

⁷⁴ *See* Drug Policy Alliance, *Race and the Drug War*, <http://www.drugpolicy.org/issues/race-and-drug-war>.

⁷⁵ *See id.*

[O]n average, a Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates. Such racial disparities in marijuana possession arrests exist in all regions of the country, in counties large and small, urban and rural, wealthy and poor, and with large and small Black populations. Indeed, in over 96% of counties with more than 30,000 people in which at least 2% of the residents are Black, Blacks are arrested at higher rates than whites for marijuana possession.⁷⁶

3. Collateral Consequences

The collateral consequences of even an arrest for marijuana possession can be devastating, especially if a felony conviction results. Those arrested can be saddled with a criminal conviction that can make it difficult or impossible to vote, obtain educational loans, get a job, maintain a professional license, secure housing, secure government assistance, or even adopt a child.⁷⁷ These exclusions create an often-permanent second-class status for millions of Americans. Like drug war enforcement itself, these consequences fall disproportionately on people of color. For non-citizens, a conviction can trigger deportation, sometimes with almost no possibility of discretionary relief.⁷⁸ In fact, simple marijuana possession was the fourth most common cause of deportation for any crime in 2013.⁷⁹ More than 13,000 people were deported

⁷⁶ Amer. Civil Liberties Union, *THE WAR ON MARIJUANA IN BLACK AND WHITE* (June 2013), at 4.

⁷⁷ See Drug Policy Alliance, *Just a Slap on the Wrist?: The Life-Changing Consequences of a Marijuana Arrest* (Feb. 2016), at http://www.drugpolicy.org/sites/default/files/DPA_Fact%20sheet_Hams%20of%20Marijuana%20Criminalization_%28Feb.%202016%29.pdf.

⁷⁸ See Jason Cade, *The Plea Bargain Crisis for Noncitizens in Misdemeanor Court*, 34 *CARDOZO L. REV.* 1754 (2013).

⁷⁹ See Drug Policy Alliance, *supra* note 77, at 1.

in 2012 and 2013 just for personal marijuana possession.⁸⁰

Today, overcriminalized communities continue to suffer the consequences of failed drug policies, even in states that have legalized marijuana, where arrests have dropped for marijuana crimes.⁸¹ Legalization has not generated a reduction of the rate at which Black and Latino people are arrested in these states.⁸² In fact, many states have seen an even steeper rise in the percentage of African-Americans and Latinos having their lives impacted by a marijuana arrest.⁸³ Two years after decriminalization in Washington, DC, a Black person was 11 times more likely than a white person to be arrested for public use of marijuana.⁸⁴

Public support for making marijuana legal has increased over the past two decades.⁸⁵ The resulting trend in state-level legalization of marijuana has placed states in apparent conflict with federal law and, as a result, the Justice Department has struggled with how to continue to uphold federal law in this context. Meanwhile, numerous difficulties have arisen as states seek to develop a framework for a legal cannabis industry without easy access to banking and credit. Because marijuana is still a controlled substance under the CSA, the specter of prosecution for participation in the cannabis industry looms large, even though medicinal or recreational marijuana is legal in 33 states and the District of Columbia.

⁸⁰ *See id.*

⁸¹ *See* German Lopez, *After Legalization, Black People Are Still Arrested at Higher Rates for Marijuana than White People*, VOX (Jan. 29, 2018), <https://www.vox.com/policy-and-politics/2018/1/29/16936908/marijuana-legalization-racial-disparities-arrests>.

⁸² *See id.*

⁸³ *See id.*

⁸⁴ Drug Policy Alliance, *FROM PROHIBITION TO PROGRESS: A STATUS REPORT ON MARIJUANA LEGALIZATION* (Jan. 2018), at 31, http://www.drugpolicy.org/sites/default/files/dpa_marijuana_legalization_report_feb14_2018_0.pdf.

⁸⁵ *See* Hannah Hartig & A.W. Geiger, *About Six-in-Ten Americans Support Marijuana Legalization*, PEW RESEARCH CENTER (Oct. 8, 2018), <https://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>.

In addition, the collateral consequences suffered by those with marijuana convictions are numerous and vast. Many criminal justice advocates argue that expunging marijuana convictions is a necessary addition to any legalization measure.⁸⁶ Moreover, they believe that people who have been harmed by marijuana enforcement should have a place in the burgeoning marketplace created by legalization.⁸⁷ They further argue that reform efforts should enable people who have struggled to find employment due to drug convictions to participate meaningfully in the marijuana industry.⁸⁸ They contend that excluding people directly impacted by criminalization from the marijuana industry further entrenches the outsized impact that the War on Drugs has had on communities of color.⁸⁹

HEARINGS

On July 10, 2019, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing titled, “Marijuana Laws in America: Racial Justice and the Need for Reform,” which assisted in the development of the substance of the MORE Act.

COMMITTEE CONSIDERATION

On November 20, 2019, the Committee met in open session and ordered the bill, H.R. 3884, favorably reported as an amendment in the nature of a substitute, by a vote of 24 to 10.

⁸⁶ See Sophie Quinton, *In These States, Past Marijuana Crimes Can Go Away*, PEW CHARITABLE TRUSTS (Nov. 20, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/20/in-these-states-past-marijuana-crimes-can-go-away>; Charlotte Resing, *Marijuana Legalization is a Racial Justice Issue*, AMER. CIVIL LIBERTIES UNION (Apr. 20, 2019), <https://www.aclu.org/blog/criminal-law-reform/drug-law-reform/marijuana-legalization-racial-justice-issue>; Margaret Stevenson, *Expungement: A Gateway to Work*, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW (Apr. 2015), <https://www.povertylaw.org/clearinghouse/articles/expungement>.

⁸⁷ See Jenni Avins, *In the Age of Luxury Cannabis, It's Time to Talk About Drug War Reparations*, QUARTZ (Jan. 25, 2019), <https://qz.com/1482349/weed-and-reparations/>.

⁸⁸ See *id.*

⁸⁹ See Resing, *supra* note 86.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following votes occurred during the Committee's consideration of H.R. 3884.

1. Motion to report H.R. 3884, as amended, favorably was agreed to by a rollcall vote of 24 to 10.

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Final Passage on HR 3884

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)			
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)			
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	24	10	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3884 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3884 would be consistent with its general goals and objectives by federally decriminalizing marijuana by removing marijuana from the schedule of controlled substances, expunging federal marijuana-related convictions, and creating programs within the Department of Justice and the Small Business Administration to ensure the benefits of the excise tax on sales of marijuana products imposed pursuant to H.R. 3884 are made available for individuals and communities most adversely impacted by the War on Drugs.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3884 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. The title of this Act is the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” or the “MORE Act of 2019.”

Sec. 2. Findings. Section 2, added in Committee markup, sets forth a number of findings pertaining to the purpose of the legislation.

Sec. 3. Decriminalization of Cannabis. Section 3 would decriminalize cannabis by removing two items—marihuana and tetrahydrocannabinols—from Schedule I of the Controlled Substances Act (CSA) and would make a series of conforming amendments. This section would

make the descheduling of cannabis retroactive, including in cases involving juvenile adjudications. Section 3 would also direct the Attorney General to finalize a rulemaking, not later than 180 days after enactment of the MORE Act, removing marijuana and tetrahydrocannabinols from the schedules of controlled substances.

Sec. 4. Demographic Data of Cannabis Business Owners and Employees. Section 4 would direct the Bureau of Labor Statistics to regularly compile, maintain, and make public data on the demographics (i.e., age, race and ethnicity, sex, etc.) of the individuals who are business owners in the cannabis industry and individuals who are employed in the cannabis industry. Section 4 would preserve confidentiality by ensuring that no names, addresses, or other identifying information collected under this section are made available to the public.

Sec. 5. Creation of Opportunity Trust Fund and Imposition of Tax on Cannabis Products. Section 5 would establish an Opportunity Trust Fund within the Treasury consisting of such amounts as would be appropriated or credited to the fund. The Opportunity Trust Fund would have appropriated to it amounts equivalent to the net revenue received in the Treasury from a 5% excise tax on sales of cannabis products manufactured in, or imported into, the United States.

Section 5 would amend the Internal Revenue Code to treat cannabis products in the same manner as tobacco products and manufacturers of cannabis products in the same manner as manufacturers of tobacco products. (“Cannabis products” would not include prescribed drugs and a “manufacturer” would not include someone who is manufacturing a cannabis product for their own personal consumption or use.) Manufacturers of cannabis products would be required to register with the Treasury Department, file a surety bond relating to tax liability for their cannabis products, and pay an annual occupational tax. The cannabis excise tax would generally

be determined when a cannabis product is “removed” from a bonded facility’s premises. If a cannabis product moves between bonded facilities and the receiving facility assumes the tax liability from the transferor, no tax would be collected on that transfer. In general, the Internal Revenue Code amendments establishing a cannabis excise tax and those governing the operation of a manufacturer of cannabis products would be effective for calendar quarters beginning one year after enactment of the MORE Act. Amendments establishing the Opportunity Trust Fund would be effective upon enactment of the MORE Act.

The Opportunity Trust Fund would make funds available, without further appropriation, as follows: (1) 50% to the Attorney General for eligible non-profit community organizations to administer services to individuals most adversely impacted by the War on Drugs; (2) 10% to the Attorney General for eligible non-profit community organizations to administer substance use treatment services for individuals most adversely impacted by the War on Drugs; (3) 20% to the Small Business Administration for eligible States or localities to make loans to assist small business concerns owned and controlled by socially and economically disadvantaged individuals that operate in the cannabis industry; and (4) 20% to the Small Business Administration for funds to States and localities to develop and implement equitable licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs.

Sec. 6. Opportunity Trust Fund Grant Programs. Section 6 would establish programs in the Department of Justice and the Small Business Administration (SBA) to be funded from the Opportunity Trust Fund established in Section 5 of the bill.

Subsection 6(a)--Department of Justice Program. Subsection 6(a) would create a Cannabis Justice Office (CJO), with a Director (appointed by, and who would report to, the

Assistant Attorney General for the Office of Justice Programs). The Director would be exclusively assigned to the CJO. The CJO would administer the Community Reinvestment Grant Program.

The Community Reinvestment Grant Program would fund eligible non-profit community organizations to provide a variety of services for individuals most adversely impacted by the War on Drugs, to include job training, reentry services, legal aid for civil and criminal cases (including for expungement of cannabis convictions), among others. The Community Reinvestment Grant Program would separately fund eligible non-profit community organizations to administer substance use treatment services for individuals most adversely impacted by the War on Drugs.

Subsection 6(b)—Small Business Administration Programs. Subsection 6(b) would direct the SBA to establish and carry out a Cannabis Opportunity Program and an Equitable Licensing Grant Program. Eligible entities under these two SBA programs would be States and localities that (1) have taken steps to create an automatic process for the expungement, destruction, or sealing of criminal records for cannabis offenses and (2) have taken steps to eliminate violations or other penalties for persons still under State or local criminal supervision for a cannabis-related offense or violation for conduct now lawful under State or local law.

Under the Cannabis Opportunity Program, funds would be made available to eligible States and localities to make loans to assist small business concerns that operate in the cannabis industry that are owned and controlled by socially and economically disadvantaged individuals. Under the Equitable Licensing Grant Program, funds would be made available to eligible States and localities to develop and implement equitable cannabis licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the

War on Drugs.

Sec. 7. Availability of Small Business Administration Programs and Services to Cannabis-Related Legitimate Businesses and Service Providers. Section 7 would ensure cannabis-related legitimate businesses and service providers are not prohibited from having access to: (1) services from Small Business Development Centers; (2) services from Women's Business Centers; (3) services from the SCORE program; (4) services from Veteran Business Outreach Centers; (5) loan guarantees under the Loan Guaranty Program in section 7(a) of the Small Business Act; (6) assistance under SBA's Disaster Assistance Program; or (7) assistance under SBA's Microloan program from intermediaries participating in SBA's Microloan program. Section 7 would also prohibit the SBA from declining to provide a loan guarantee under the 504/Certified Development Company to an otherwise eligible State or local development company solely because such State or local development company provides financing to an entity that is a cannabis-related legitimate business or service provider.

Sec. 8. No Discrimination in the Provision of a Federal Public Benefit on the Basis of Cannabis. Section 8 would make clear that no person may be denied a Federal public benefit on the basis of any use or possession of cannabis, or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense. In addition, Federal agencies would be precluded from using past or present cannabis or marijuana use as criteria for granting, denying, or rescinding a security clearance.

Sec. 9. No Adverse Effect for Purposes of the Immigration Laws. Section 9 would ensure that cannabis is not considered a controlled substance for purposes of the immigration laws, and it would establish that no alien may be denied any benefit or protection under the immigration laws, regardless of whether the conduct, finding, admission, addiction or abuse,

arrest, conviction, or juvenile adjudication relating to cannabis occurred before, on, or after the effective date of the MORE Act. Section 9 would make a series of conforming amendments striking marihuana from the Immigration and Nationality Act.

Sec. 10. Resentencing and Expungement. Section 10 has different expungement and sentencing review procedures for individuals (1) who have completed their Federal sentences or adjudications of juvenile delinquency and are no longer under court supervision (i.e., “not under a criminal justice sentence”) and (2) who are still serving their Federal sentences or adjudications or are otherwise under court supervision (i.e., “under a criminal justice sentence”). Section 10 would ensure the appointment of counsel for indigent individuals seeking expungement or sentencing review.

Subsection 10(a)—Expungement for Individuals Not Under a Criminal Justice Sentence. For individuals not under a criminal justice sentence, subsection 10(a) would direct each Federal district, not later than one year after enactment of the MORE Act, to order the expungement of each conviction and juvenile adjudication for a cannabis offense entered by each court in the district, retroactive to the effective date of the Controlled Substances Act (May 1, 1971). However, any individual “not under a criminal justice sentence” would have a right to petition the court for expungement at any point after the enactment of the MORE Act (e.g., if any such individual would need or desire expungement earlier than one year after enactment, or if a court fails to pursue expungement where an individual believes they are eligible). Subsection 10(a) would also direct the court to order the expungement of any associated arrests. Records expunged under subsection 10(a) would be sealed and could only be made available by further order of the court. Finally, subsection 10(a) would direct that each Federal district, to the extent practicable, notify each individual whose conviction or juvenile adjudication has been expunged

about such expungement and the effect of the expungement.

Subsection 10(b)—Sentencing Review for Individuals Under a Criminal Justice Sentence.

For individuals still under a criminal justice sentence, subsection 10(b) would direct the district court that imposed the sentence or disposition to hold a sentencing review hearing. Sentencing review could be initiated by the individual, the Director of the Bureau of Prisons, the attorney for the Government, or the court. Subsection 10(b) would direct courts to expunge each conviction or adjudication of juvenile delinquency and any associated arrests; vacate any existing sentence or disposition of juvenile delinquency and, if applicable, impose any remaining sentence as if the MORE Act (and its amendments) were in effect at the time the offense was committed; and order all records that have been expunged or vacated under subsection 10(b) be sealed and only be made available by further order of the court.

Subsection 10(c)—Effect of Expungement. In the case of an expungement under subsection 10(a) or 10(b), the effect of the expungement would be the same: an individual may treat an expunged arrest, conviction, or juvenile delinquency adjudication as if it never occurred and the individual would be immune from civil or criminal penalties for perjury, false swearing, or false statements, for failing to disclose the expunged arrest, conviction, or juvenile delinquency adjudication.

Sec. 11. References in Existing Law to Marijuana or Marihuana. Section 11 inserts the term “cannabis” wherever the term “marijuana” (or “marihuana”) appears in existing law.

Sec. 12. Severability. Section 12 provides that if any provision of the MORE Act is held to be unconstitutional, the remainder of the Act and its application to any other person or circumstances will not be affected.

Sec. 13. Cannabis Offense Defined. Section 13 defines a “cannabis offense” as a

criminal offense related to cannabis that (1) under Federal law, is no longer punishable pursuant to the MORE Act (or its amendments) and (2) under State law, is no longer an offense or was designated a lesser offense, or whose penalty was reduced under State law pursuant to or following the adoption of a State law authorizing the sale or use of cannabis.

Sec. 14. Rulemaking. Section 14 would direct the Department of the Treasury, the Department of Justice, and the Small Business Administration, not later than one year after the enactment of the MORE Act, to issue or amend any rules, standard operating procedures, and other legal or policy guidance necessary to carry out implementation of the MORE Act. After the one-year period, Section 14 would prohibit the issuance of sub-regulatory guidance without 60-day notice to the appropriate Congressional committee.

Sec. 15. Societal Impact of Marijuana Legalization Study. Section 15, added in Committee markup, would direct the Comptroller General to conduct a study and report to Congress concerning the societal impacts of the legalization of recreational cannabis by States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

* * * * *

TITLE II—CONTROL AND ENFORCEMENT

* * * * *

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

* * * * *

DEFINITIONS

SEC. 102. As used in this title:

(1) The term “addict” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term “administer” refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term “agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier’s or warehouseman’s business.

(4) The term “Drug Enforcement Administration” means the Drug Enforcement Administration in the Department of Justice.

(5) The term “control” means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

(6) The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. The term does not include distilled spir-

its, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

(7) The term “counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms “deliver” or “delivery” mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9) The term “depressant or stimulant substance” means—

(A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term “dispenser” means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term “distributor” means a person who so delivers a controlled substance or a listed chemical.

(12) The term “drug” has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

(13) The term “felony” means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term “isomer” means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term “isomer” means any optical, positional, or geometric isomer. As used in schedule II(a)(4), the term “isomer” means any optical or geometric isomer.

(15) The term “manufacture” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical

synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term “manufacturer” means a person who manufactures a drug or other substance.

(16)(A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term marihuana does not include—

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term “narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

(18) The term “opiate” or “opioid” means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(19) The term “opium poppy” means the plant of the species *Papaver somniferum* L., except the seed thereof.

(20) The term “poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

(21) The term “practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(22) The term “production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(23) The term “immediate precursor” means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(24) The term “Secretary”, unless the context otherwise indicates, means the Secretary of Health and Human Services.

(25) The term “serious bodily injury” means bodily injury which involves—

(A) a substantial risk of death;

(B) protracted and obvious disfigurement; or

(C) protracted loss or impairment of the function of a bodily member, or organ, or mental faculty.

(26) The term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(27) The term “ultimate user” means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(28) The term “United States”, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(29) The term “maintenance treatment” means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(30) The term “detoxification treatment” means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(31) The term “Convention on Psychotropic Substances” means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term “Single Convention on Narcotic Drugs” means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(32)(A) Except as provided in subparagraph (C), the term “controlled substance analogue” means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.

(C) Such term does not include—

(i) a controlled substance;

(ii) any substance for which there is an approved new drug application;

(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(33) The term “listed chemical” means any list I chemical or any list II chemical.

(34) The term “list I chemical” means a chemical specified by regulation to the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is important to the manufacture of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

(A) Anthranilic acid, its esters, and its salts.

(B) Benzyl cyanide.

(C) Ephedrine, its salts, optical isomers, and salts of optical isomers.

(D) Ergonovine and its salts.

(E) Ergotamine and its salts.

(F) N-Acetylanthranilic acid, its esters, and its salts.

(G) Norpseudoephedrine, its salts, optical isomers, and salts of

(H) Phenylacetic acid, its esters, and its salts.

(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

(J) Piperidine and its salts.

(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(L) 3,4-Methylenedioxyphenyl-2-propanone.

(M) Methylamine.

(N) Ethylamine.

(O) Propionic anhydride.

(P) Isosafrole.

(Q) Safrole.

(R) Piperonal.

(S) N-Methylephedrine.

(T) N-methylpseudoephedrine.

(U) Hydriodic acid.

(V) Benzaldehyde.

(W) Nitroethane.

(X) Gamma butyrolactone.

(Y) Any salt, optical isomer, or salt of an optical isomer of the chemicals listed in subparagraphs (M) through (U) of this paragraph.

(35) The term “list II chemical” means a chemical (other than a list I chemical) specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

(A) Acetic anhydride.

(B) Acetone.

(C) Benzyl chloride.

(D) Ethyl ether.

(F) Potassium permanaganate.

(G) 2-Butanone (or Methyl Ethyl Ketone).

(H) Toluene.

(I) Iodine.

(J) Hydrochloric gas.

(36) The term “regular customer” means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

(37) The term “regular importer” means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.

(38) The term “regulated person” means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(39) The term “regulated transaction” means—

(A) a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a list-

ed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

(i) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(ii) a delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this clause does not relieve a distributor, importer, or exporter from compliance with section 310;

(iii) any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

(I) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;

(v) any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under section 310(b)(3); or

(vi) any transaction in a chemical mixture which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered; and
(B) a distribution, importation, or exportation of a tableting machine or encapsulating machine.

(40) The term “chemical mixture” means a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not in-

clude any combination of a list I chemical or a list II chemical with another chemical that is present solely as an impurity.

(41)(A) The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes—

- (i) androstenediol—
 - (I) 3 β ,17 β -dihydroxy-5 α -androstane; and
 - (II) 3 α ,17 β -dihydroxy-5 α -androstane;
- (ii) androstenedione (5 α -androst-3,17-dione);
- (iii) androstenediol—
 - (I) 1-androstenediol (3 β ,17 β -dihydroxy-5 α -androst-1-ene);
 - (II) 1-androstenediol (3 α ,17 β -dihydroxy-5 α -androst-1-ene);
 - (III) 4-androstenediol (3 β ,17 β -dihydroxy-androst-4-ene); and
 - (IV) 5-androstenediol (3 β ,17 β -dihydroxy-androst-5-ene);
- (iv) androstenedione—
 - (I) 1-androstenedione ([5 α]-androst-1-en-3,17-dione);
 - (II) 4-androstenedione (androst-4-en-3,17-dione); and
 - (III) 5-androstenedione (androst-5-en-3,17-dione);
- (v) bolasterone (7 α ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);
- (vi) boldenone (17 β -hydroxyandrost-1,4,-diene-3-one);
- (vii) calusterone (7 β ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);
- (viii) clostebol (4-chloro-17 β -hydroxyandrost-4-en-3-one);
- (ix) dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methyl-androst-1,4-dien-3-one);
- (x) Δ 1-dihydrotestosterone (a.k.a. “1-testosterone”) (17 β -hydroxy-5 α -androst-1-en-3-one);
- (xi) 4-dihydrotestosterone (17 β -hydroxy-androstan-3-one);
- (xii) drostanolone (17 β -hydroxy-2 α -methyl-5 α -androstan-3-one);
- (xiii) ethylestrenol (17 α -ethyl-17 β -hydroxyestr-4-ene);
- (xiv) fluoxymesterone (9-fluoro-17 α -methyl-11 β ,17 β -dihydroxyandrost-4-en-3-one);
- (xv) formebolone (2-formyl-17 α -methyl-11 α ,17 β -dihydroxyandrost-1,4-dien-3-one);
- (xvi) furazabol (17 α -methyl-17 β -hydroxyandrostan-2,3-c-furazan);
- (xvii) 13 β -ethyl-17 β -hydroxygon-4-en-3-one;
- (xviii) 4-hydroxytestosterone (4,17 β -dihydroxy-androst-4-en-3-one);
- (xix) 4-hydroxy-19-nortestosterone (4,17 β -dihydroxy-estr-4-en-3-one);
- (xx) mestanolone (17 α -methyl-17 β -hydroxy-5 α -androstan-3-one);
- (xxi) mesterolone (1 α -methyl-17 β -hydroxy-[5 α]-androstan-3-one);

(xxii) methandienone (17 α -methyl-17 β -hydroxyandrost-1,4-dien-3-one);
(xxiii) methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene);
(xxiv) methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one);
(xxv) 17 α -methyl-3 β , 17 β -dihydroxy-5 α -androstane;
(xxvi) 17 α -methyl-3 α ,17 β -dihydroxy-5 α -androstane;
(xxvii) 17 α -methyl-3 β ,17 β -dihydroxyandrost-4-ene.
(xxviii) 17 α -methyl-4-hydroxynandrolone (17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one);
(xxix) methyldienolone (17 α -methyl-17 β -hydroxyestra-4,9(10)-dien-3-one);
(xxx) methyltrienolone (17 α -methyl-17 β -hydroxyestra-4,9-11-trien-3-one);
(xxxii) methyltestosterone (17 α -methyl-17 β -hydroxyandrost-4-en-3-one);
(xxxiii) mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one);
(xxxiii) 17 α -methyl- Δ 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (a.k.a. "17- α -methyl-1-testosterone");
(xxxiv) nandrolone (17 β -hydroxyestr-4-en-3-one);
(xxxv) norandrostenediol—
(I) 19-nor-4-androstenediol (3 β , 17 β -dihydroxyestr-4-ene);
(II) 19-nor-4-androstenediol (3 α , 17 β -dihydroxyestr-4-ene);
(III) 19-nor-5-androstenediol (3 β , 17 β -dihydroxyestr-5-ene); and
(IV) 19-nor-5-androstenediol (3 α , 17 β -dihydroxyestr-5-ene);
(xxxvi) norandrostenedione—
(I) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
and
(II) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
(xxxvii) norbolethone (13 β ,17 α -diethyl-17 β -hydroxygon-4-en-3-one);
(xxxviii) norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one);
(xxxix) norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one);
(xl) normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one);
(xli) oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α]-androstan-3-one);
(xlii) oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one);
(xliii) oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androstan-3-one);
(xliv) stanozolol (17 α -methyl-17 β -hydroxy-[5 α]-androst-2-eno[3,2-*c*]-pyrazole);
(xlv) stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one);

- (xlvi) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (xlvii) testosterone (17 β -hydroxyandrost-4-en-3-one);
- (xlviii) tetrahydrogestrinone (13 β ,17 α -diethyl-17 β -hydroxygon-4,9,11-trien-3-one);
- (xlix) trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one);
- (l) 5 α -Androstan-3,6,17-trione;
- (li) 6-bromo-androstan-3,17-dione;
- (lii) 6-bromo-androsta-1,4-diene-3,17-dione;
- (liii) 4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (liv) 4-chloro-17 α -methyl-androst-4-ene-3 β ,17 β -diol;
- (lv) 4-chloro-17 α -methyl-17 β -hydroxy-androst-4-en-3-one;
- (lvi) 4-chloro-17 α -methyl-17 β -hydroxy-androst-4-ene-3,11-dione;
- (lvii) 4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (lviii) 2 α ,17 α -dimethyl-17 β -hydroxy-5 α -androstan-3-one;
- (lix) 2 α ,17 α -dimethyl-17 β -hydroxy-5 β -androstan-3-one;
- (lx) 2 α ,3 α -epithio-17 α -methyl-5 α -androstan-17 β -ol;
- (lxi) [3,2-c]-furazan-5 α -androstan-17 β -ol;
- (lxii) 3 β -hydroxy-estra-4,9,11-trien-17-one;
- (lxiii) 17 α -methyl-androst-2-ene-3,17 β -diol;
- (lxiv) 17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (lxv) Estra-4,9,11-triene-3,17-dione;
- (lxvi) 18a-Homo-3-hydroxy-estra-2,5(10)-dien-17-one;
- (lxvii) 6 α -Methyl-androst-4-ene-3,17-dione;
- (lxviii) 17 α -Methyl-androstan-3-hydroxyimine-17 β -ol;
- (lxix) 17 α -Methyl-5 α -androstan-17 β -ol;
- (lxx) 17 β -Hydroxy-androstano[2,3-d]isoxazole;
- (lxxi) 17 β -Hydroxy-androstano[3,2-c]isoxazole;
- (lxxii) 4-Hydroxy-androst-4-ene-3,17-dione[3,2-c]pyrazole-5 α -androstan-17 β -ol;
- (lxxiii) [3,2-c]pyrazole-androst-4-en-17 β -ol;
- (lxxiv) [3,2-c]pyrazole-5 α -androstan-17 β -ol; and
- (lxxv) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201.

(B)(i) Except as provided in clause (ii), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

(ii) If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of subparagraph (A).

(C)(i) Subject to clause (ii), a drug or hormonal substance (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that is not listed in subparagraph (A) and is derived from, or has a chemical structure substantially similar

to, 1 or more anabolic steroids listed in subparagraph (A) shall be considered to be an anabolic steroid for purposes of this Act if—

(I) the drug or substance has been created or manufactured with the intent of producing a drug or other substance that either—

(aa) promotes muscle growth; or

(bb) otherwise causes a pharmacological effect similar to that of testosterone; or

(II) the drug or substance has been, or is intended to be, marketed or otherwise promoted in any manner suggesting that consuming it will promote muscle growth or any other pharmacological effect similar to that of testosterone.

(ii) A substance shall not be considered to be a drug or hormonal substance for purposes of this subparagraph if it—

(I) is—

(aa) an herb or other botanical;

(bb) a concentrate, metabolite, or extract of, or a constituent isolated directly from, an herb or other botanical; or

(cc) a combination of 2 or more substances described in item (aa) or (bb);

(II) is a dietary ingredient for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); and

(III) is not anabolic or androgenic.

(iii) In accordance with section 515(a), any person claiming the benefit of an exemption or exception under clause (ii) shall bear the burden of going forward with the evidence with respect to such exemption or exception.

(42) The term “international transaction” means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

(43) The terms “broker” and “trader” mean a person that assists in arranging an international transaction in a listed chemical by—

(A) negotiating contracts;

(B) serving as an agent or intermediary; or

(C) bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.

(44) The term “felony drug offense” means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, [marihuana,] anabolic steroids, or depressant or stimulant substances.

(45)(A) The term “scheduled listed chemical product” means, subject to subparagraph (B), a product that—

(i) contains ephedrine, pseudoephedrine, or phenylpropanolamine; and

(ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.

Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

(B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) added to any of the schedules under section 202(c). In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

(46) The term “regulated seller” means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

(47) The term “mobile retail vendor” means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(48) The term “at retail”, with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

(49)(A) The term “retail distributor” means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to ephedrine, pseudoephedrine, or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

(B) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i) A grocery store is an entity within SIC code 5411.

(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

(iii) A drug store is an entity within SIC code 5912.

(50) The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(51) The term “deliver, distribute, or dispense by means of the Internet” refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(52) The term “online pharmacy”—

(A) means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver,

distribute, or dispense, a controlled substance by means of the Internet; and

(B) does not include—

(i) manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 who do not dispense controlled substances to an unregistered individual or entity;

(ii) nonpharmacy practitioners who are registered under section 303(f) and whose activities are authorized by that registration;

(iii) any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f);

(iv) a health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act;

(v) any agent or employee of any hospital or facility referred to in clause (iii) or (iv), provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in clause (iv), only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such clause;

(vi) mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(vii) a person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(viii) a pharmacy registered under section 303(f) whose dispensing of controlled substances via the Internet consists solely of—

(I) refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (55); or

(II) filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (56); or

(ix) any other persons for whom the Attorney General and the Secretary have jointly, by regulation, found it to be consistent with effective controls against diversion and otherwise consistent with the public health and safety to exempt from the definition of an “online pharmacy”.

(53) The term “homepage” means the opening or main page or screen of the website of an online pharmacy that is viewable on the Internet.

(54) The term “practice of telemedicine” means, for purposes of this title, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist)

who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act, which practice—

- (A) is being conducted—
 - (i) while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f); and
 - (ii) by a practitioner—
 - (I) acting in the usual course of professional practice;
 - (II) acting in accordance with applicable State law; and
 - (III) registered under section 303(f) in the State in which the patient is located, unless the practitioner—
 - (aa) is exempted from such registration in all States under section 302(d); or
 - (bb) is—
 - (AA) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
 - (BB) registered under section 303(f) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);
- (B) is being conducted while the patient is being treated by, and in the physical presence of, a practitioner—
 - (i) acting in the usual course of professional practice;
 - (ii) acting in accordance with applicable State law; and
 - (iii) registered under section 303(f) in the State in which the patient is located, unless the practitioner—
 - (I) is exempted from such registration in all States under section 302(d); or
 - (II) is—
 - (aa) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
 - (bb) registered under section 303(f) in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);
- (C) is being conducted by a practitioner—
 - (i) who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act;
 - (ii) acting within the scope of the employment, contract, or compact described in clause (i); and
 - (iii) who is designated as an Internet Eligible Controlled Substances Provider by the Secretary under section 311(g)(2);

(D)(i) is being conducted during a public health emergency declared by the Secretary under section 319 of the Public Health Service Act; and

(ii) involves patients located in such areas, and such controlled substances, as the Secretary, with the concurrence of the Attorney General, designates, provided that such designation shall not be subject to the procedures prescribed by subchapter II of chapter 5 of title 5, United States Code;

(E) is being conducted by a practitioner who has obtained from the Attorney General a special registration under section 311(h);

(F) is being conducted—

(i) in a medical emergency situation—

(I) that prevents the patient from being in the physical presence of a practitioner registered under section 303(f) who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(II) that prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(III) during which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(IV) that requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) by a practitioner that—

(I) is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(II) is registered under section 303(f) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f); and

(III) issues a controlled substance prescription in this emergency context that is limited to a maximum of a 5-day supply which may not be extended or refilled; or

(G) is being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.

(55) The term “refilling prescriptions for controlled substances in schedule III, IV, or V”—

(A) means the dispensing of a controlled substance in schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309, as appropriate; and

(B) does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(56) The term “filling new prescriptions for controlled substances in schedule III, IV, or V” means filling a prescription for an individual for a controlled substance in schedule III, IV, or V, if—

(A) the pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 (in this paragraph referred to as the “original prescription”);

(B) the pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in subparagraph (A); and

(C) the practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

(57) The term “suspicious order” may include, but is not limited to—

(A) an order of a controlled substance of unusual size;

(B) an order of a controlled substance deviating substantially from a normal pattern; and

(C) orders of controlled substances of unusual frequency.

(57) The term “serious drug felony” means an offense described in section 924(e)(2) of title 18, United States Code, for which—

(A) the offender served a term of imprisonment of more than 12 months; and

(B) the offender’s release from any term of imprisonment was within 15 years of the commencement of the instant offense.

(58) The term “serious violent felony” means—

(A) an offense described in section 3559(c)(2) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; and

(B) any offense that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

* * * * *

SCHEDULES OF CONTROLLED SUBSTANCES

SEC. 202. (a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title and shall be updated and republished on an annual basis thereafter.

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxidine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.

- (37) Phenoperidine.
 - (38) Piritramide.
 - (39) Proheptazine.
 - (40) Properidine.
 - (41) Racemoramide.
 - (42) Trimeperidine.
- (b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (1) Acetorphine.
 - (2) Acetyldihydrocodeine.
 - (3) Benzylmorphine.
 - (4) Codeine methylbromide.
 - (5) Codeine-N-Oxide.
 - (6) Cyprenorphine.
 - (7) Desomorphine.
 - (8) Dihydromorphine.
 - (9) Etorphine.
 - (10) Heroin.
 - (11) Hydromorphanol.
 - (12) Methyldesorphine.
 - (13) Methylhydromorphine.
 - (14) Morphine methylbromide.
 - (15) Morphine methylsulfonate.
 - (16) Morphine-N-Oxide.
 - (17) Myrophine.
 - (18) Nicocodeine.
 - (19) Nicomorphine.
 - (20) Normorphine.
 - (21) Pholcodine.
 - (22) Thebacon.
- (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (1) 3,4-methylenedioxy amphetamine.
 - (2) 5-methoxy-3,4-methylenedioxy amphetamine.
 - (3) 3,4,5-trimethoxy amphetamine.
 - (4) Bufotenine.
 - (5) Diethyltryptamine.
 - (6) Dimethyltryptamine.
 - (7) 4-methyl-2,5-dimethoxy amphetamine.
 - (8) Ibogaine.
 - (9) Lysergic acid diethylamide.
 - [(10) Marihuana.]
 - (11) Mescaline.
 - (12) Peyote.
 - (13) N-ethyl-3-piperidyl benzilate.
 - (14) N-methyl-3-piperidyl benzilate.

- (15) Psilocybin.
- (16) Psilocyn.
- [(17) Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946).]
- (18) 4-methylmethcathinone (Mephedrone).
- (19) 3,4-methylenedioxypropylvalerone (MDPV).
- (20) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).
- (21) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).
- (22) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).
- (23) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- (24) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- (25) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4).
- (26) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).
- (27) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- (28) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).

(d)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(2) In paragraph (1):

(A) The term “cannabimimetic agents” means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(B) Such term includes—

- (i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);
- (ii) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);
- (iii) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678);
- (iv) 1-butyl-3-(1-naphthoyl)indole (JWH-073);
- (v) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);
- (vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);
- (vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);
- (viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);
- (ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122);
- (x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398);
- (xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
- (xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);
- (xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4);
- (xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8); and
- (xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).

* * * * *

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 409, 418, 419, or 420 any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

[(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or]

[(viii) (vii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised

release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

[(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or]

[(viii) (vii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results

from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in [subparagraphs (A), (B), and (D)] *subparagraphs (A) and (B)*, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

[(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than

5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United State Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.】

【(E)】 (D)(i) Except as provided in 【subparagraphs (C) and (D)】 *subparagraph (C)*, in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice the authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an

individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than 1 year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the provisions of title 18, United States Code, or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

[(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 and section 3607 of title 18, United States Code.]

[(5)] (4) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

- (A) the amount authorized in accordance with this section;
 - (B) the amount authorized in accordance with the provisions of title 18, United States Code;
 - (C) \$500,000 if the defendant is an individual; or
 - (D) \$1,000,000 if the defendant is other than an individual;
- or both.

[(6)] (5) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

- (A) creates a serious hazard to humans, wildlife, or domestic animals,
- (B) degrades or harms the environment or natural resources, or
- (C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

[(7)] (6) PENALTIES FOR DISTRIBUTION.—

(A) IN GENERAL.—Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled

substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B) DEFINITION.—For purposes of this paragraph, the term “without that individual's knowledge” means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

(2) possesses or distributes, a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the record-keeping or reporting requirements of section 310, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3) For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) applies, be fined

under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) INTERNET SALES OF DATE RAPE DRUGS.—

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser; shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, United States Code, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) OFFENSES INVOLVING DISPENSING OF CONTROLLED SUBSTANCES BY MEANS OF THE INTERNET.—

(1) IN GENERAL.—It shall be unlawful for any person to knowingly or intentionally—

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B) aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by this title.

(2) EXAMPLES.—Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(f) (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e);

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections 303(f) or 309(e);

(D) offering to fill a prescription for a controlled substance based solely on a consumer’s completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311.

(3) INAPPLICABILITY.—

(A) This subsection does not apply to—

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to—

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) KNOWING OR INTENTIONAL VIOLATION.—Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III;

(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection, or to

use to his own advantage or reveal (other than as authorized by section 310) any information that is confidential under such section;

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 310(a)(3);

(10) negligently to fail to keep a record or make a report under section 310 or negligently to fail to self-certify as required under section 310;

(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this title or title III, with reckless disregard for the illegal uses to which such a laboratory supply will be put;

(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 310—

(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section;

(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 310(e)(1), information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities;

(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 310(b)(3)(B), unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 310(e)(1)(B)(v);

(16) to violate subsection (e) of section 825 of this title; or

(17) in the case of a registered manufacturer or distributor of opioids, to fail to review the most recent information, directly related to the customers of the manufacturer or distributor, made available by the Attorney General in accordance with section 307(f).

As used in paragraph (11), the term “laboratory supply” means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or

firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer. For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 310(e)(1)(B)(v), the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 310(e)(1)(B)(v).

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical, which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

(c)(1)(A) Except as provided in subparagraph (B), (C), or (D) of this paragraph and paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

(B)(i) Except as provided in clause (ii), in the case of a violation of paragraph (5), (10), or (17) of subsection (a), the civil penalty shall not exceed \$10,000.

(ii) In the case of a violation described in clause (i) committed by a registered manufacturer or distributor of opioids and related to the reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 307(f), the penalty shall not exceed \$100,000.

(C) In the case of a violation of paragraph (16) of subsection (a) of this section by an importer, exporter, manufacturer, or distributor (other than as provided in subparagraph (D)), up to \$500,000 per violation. For purposes of this subparagraph, a violation is defined as each instance of importation, exportation, manufacturing, distribution, or possession with intent to manufacture or distribute, in violation of paragraph (16) of subsection (a).

(D) In the case of a distribution, dispensing, or possession with intent to distribute or dispense in violation of paragraph (16) of subsection (a) of this section at the retail level, up to \$1000 per violation. For purposes of this paragraph, the term “at the retail level”

refers to products sold, or held for sale, directly to the consumer for personal use. Each package, container or other separate unit containing an anabolic steroid that is distributed, dispensed, or possessed with intent to distribute or dispense at the retail level in violation of such paragraph (16) of subsection (a) shall be considered a separate violation.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) or (D) of this paragraph, be sentenced to imprisonment of not more than one year or a fine under title 18, United States Code, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs[, marihuana,] or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine under title 18, United States Code, or both.

(C) In addition to the penalties set forth elsewhere in this title or title III, any business that violates paragraph (11) of subsection (a) shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater.

(D) In the case of a violation described in subparagraph (A) that was a violation of paragraph (5), (10), or (17) of subsection (a) committed by a registered manufacturer or distributor of opioids that relates to the reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 307(f), the criminal fine under title 18, United States Code, shall not exceed \$500,000.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(4)(A) If a regulated seller, or a distributor required to submit reports under section 310(b)(3), violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 304(c) for an order to show cause.

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III, or (B) to present false or fraudulent identification where the person is receiving or purchasing a listed chemical and the person is required to present identification under section 310(a);

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance;

(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this title or title III;

(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this title or title III or, in the case of an exportation, in violation of this title or title III or of the laws of the country to which it is exported;

(8) to create a chemical mixture for the purpose of evading a requirement of section 310 or to receive a chemical mixture created for that purpose; or

(9) to distribute, import, or export a list I chemical without the registration required by this title or title III.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a

felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

(c)(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. As used in this section the term “advertisement” includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. The term “advertisement” does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule I controlled substance.

(2)(A) It shall be unlawful for any person to knowingly or intentionally use the Internet, or cause the Internet to be used, to advertise the sale of, or to offer to sell, distribute, or dispense, a controlled substance where such sale, distribution, or dispensing is not authorized by this title or by the Controlled Substances Import and Export Act.

(B) Examples of activities that violate subparagraph (A) include, but are not limited to, knowingly or intentionally causing the placement on the Internet of an advertisement that refers to or directs prospective buyers to Internet sellers of controlled substances who are not registered with a modification under section 303(f).

(C) Subparagraph (A) does not apply to material that either—

(i) merely advertises the distribution of controlled substances by nonpractitioners to the extent authorized by their registration under this title; or

(ii) merely advocates the use of a controlled substance or includes pricing information without attempting to facilitate an actual transaction involving a controlled substance.

(d)(1) Except as provided in paragraph (2), any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine under title 18, United States Code, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs[, marihuana,] or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine under title 18, United States Code, or both.

(2) Any person who, with the intent to manufacture or to facilitate the manufacture of methamphetamine, violates paragraph (6) or (7) of subsection (a), shall be sentenced to a term of imprisonment of not more than 10 years, a fine under title 18, United

States Code, or both; except that if any person commits such a violation after one or more prior convictions of that person—

(A) for a violation of paragraph (6) or (7) of subsection (a);
(B) for a felony under any other provision of this subchapter or subchapter II of this chapter; or

(C) under any other law of the United States or any State relating to controlled substances or listed chemicals, has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine under title 18, United States Code, or both.

(e) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) INJUNCTIONS.—(1) In addition to any penalty provided in this section, the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to violations of this section, section 402, or 416.

(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 402.

(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

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DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

SEC. 418. (a) Except as provided in section 419, any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b), and (2) at least twice any term of supervised release authorized by section 401(b), for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. [The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.]

(b) Except as provided in section 419, any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) has become final, is subject to (1) three times the maximum

punishment authorized by section 401(b), and (2) at least three times any term of supervised release authorized by section 401(b), for a second offense or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A).

SEC. 419. DISTRIBUTION IN OR NEAR SCHOOLS.—(a) Any person who violates section 401(a)(1) or section 416 by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) of this title; and (2) at least twice any term of supervised release authorized by section 401(b) for a first offense. A fine up to twice that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. [The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.]

(b) Any person who violates section 401(a)(1) or section 416 by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b) for a first offense, and (2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense. A fine up to three times that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A).

(c) Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally—

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official, is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.

(d) In the case of any mandatory minimum sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

(e) For the purposes of this section—

(1) The term “playground” means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

(2) The term “youth center” means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term “video arcade facility” means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term “swimming pool” includes any parking lot appurtenant thereto.

* * * * *

DRUG PARAPHERNALIA

SEC. 422. (a) It is unlawful for any person—

- (1) to sell or offer for sale drug paraphernalia;
- (2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or
- (3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18, United States Code.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, con-

cealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing [marijuana,] cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material[, such as a marihuana cigarette,] that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;
- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

(f) This section shall not apply to—

- (1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or
- (2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or

by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

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PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

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PAYMENTS AND ADVANCES

SEC. 516. (a) The Attorney General is authorized to pay any person, from funds appropriated for the Drug Enforcement Administration, for information concerning a violation of this title, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

(b) Moneys expended from appropriations of the Drug Enforcement Administration for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Bureau.

(c) The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this title. Section 16 of Public Law 96-132 (93 Stat. 1049) amended this title in several other places by striking references to the Bureau of Narcotics and Dangerous Drugs and inserting references to the Drug Enforcement Administration.

(d)(1) There is established in the Treasury a trust fund to be known as the "Drug Pollution Fund" (hereinafter referred to in this subsection as the "Fund"), consisting of amounts appropriated or credited to such Fund under [section 401(b)(6)] section 401(b)(5).

(2) There are hereby appropriated to the Fund amounts equivalent to the fines imposed under [section 401(b)(6)] section 401(b)(5).

(3) Amounts in the Fund shall be available, as provided in appropriations Acts, for the purpose of making payments in accordance with paragraph (4) for the clean up of certain pollution resulting from the actions referred to in [section 401(b)(6)] section 401(b)(5).

(4)(A) The Secretary of the Treasury, after consultation with the Attorney General, shall make payments under paragraph (3), in such amounts as the Secretary determines appropriate, to the heads of executive agencies or departments that meet the requirements of subparagraph (B).

(B) In order to receive a payment under paragraph (3), the head of an executive agency or department shall submit an application in such form and containing such information as the Secretary of the Treasury shall by regulation require. Such application shall contain a description of the fine imposed under [section 401(b)(6)] section 401(b)(5), the circumstances surrounding the imposition of such fine, and the type and severity of pollution that resulted from the actions to which such fine applies.

(5) For purposes of subchapter B of chapter 98 of the Internal Revenue Code of 1986, the Fund established under this paragraph

shall be treated in the same manner as a trust fund established under subchapter A of such chapter.

* * * * *

NATIONAL FOREST SYSTEM DRUG CONTROL ACT OF 1986

TITLE XV—NATIONAL FOREST SYSTEM DRUG CONTROL

SEC. 15001. SHORT TITLE.

This title may be cited as the “National Forest System Drug note. Control Act of 1986”.

SEC. 15002. PURPOSE.

(a) The purpose of this title is to authorize the Secretary of Agriculture (hereinafter in this title referred to as the “Secretary”) to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of [marijuana and other] controlled substances.

(b) Nothing in this title shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this title, the terms “manufacture”, “dispense”, and “distribute” shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 15003. POWERS.

For the purposes of this title, if specifically designated by the Secretary and specially trained, not to exceed 1,000 special agents and law enforcement officers of the Forest Service when in the performance of their duties shall have authority to—

- (1) carry firearms;
- (2) conduct, within the exterior boundaries of the National Forest System, investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to [marijuana and other] controlled substances that are manufactured, distributed, or dispensed on National Forest System lands and to conduct such investigations and enforcement of such laws outside the exterior boundaries of the National Forest System for offenses committed within the National Forest System or which affect the administration of the National Forest System (including the pursuit of persons suspected of such offenses who flee the National Forest System to avoid arrest);
- (3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in his presence or view, or for a felony with a warrant or without a warrant if he has probable cause to believe that the person to be arrested has committed or is committing such felony, for of-

fenses committed within the National Forest System or which affect the administration of the National Forest System;;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search with or without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize with or without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 15004. COOPERATION.

For the purposes of this title, in exercising the authority provided by section 15003—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed;

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 8411, other laws and regulations relating to [marijuana and other] controlled substances, and State drug control laws or ordinances for offenses committed within the National Forest System or which affect the administration of the National Forest System.

(3) the Forest Service shall cooperate with the Attorney General in carrying out the seizure and forfeiture provisions of section 511 of the Controlled Substances Act (21 U.S.C. 881) for violations of the Controlled Substances Act relating to offenses committed within the National Forest System, or which affect the administration of the National Forest System;

(4) the Secretary is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such designation to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service; and

(5) the Forest Service is authorized to accept law enforcement designation from any other Federal agency or agency of a State or political subdivision thereof for the purpose of cooperating in a multi-agency law enforcement task force investigation of violations of the Controlled Substances Act and other offenses committed in the course of or in connection with such violations.

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TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons), chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to

bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1581 (peonage), section 1582 (vessels for slave trade), section 1583 (entice-ment into slavery), section 1584 (involuntary servitude), section 1585 (seizure, detention, transportation or sale of slaves), section 1586 (service on vessels in slave trade), section 1587 (possession of slaves aboard vessel), section 1588 (transportation of slaves from United States), section 1589 (forced labor), section 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related

crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 956 (conspiracy to harm persons or property overseas), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), section 1546 (relating to fraud and misuse of visas, permits, and other documents), or section 555 (relating to construction or use of international border tunnels);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, [marihuana,] or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

- (i) any felony violation of chapter 71 (relating to obscenity) of this title;
 - (j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline), section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;
 - (k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);
 - (l) the location of any fugitive from justice from an offense described in this section;
 - (m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);
 - (n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);
 - (o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);
 - (p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents), section 1028A (relating to aggravated identity theft) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or
 - (q) any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);
 - (r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3);
 - (s) any violation of section 670 (relating to theft of medical products);
 - (t) any violation of the Export Control Reform Act of 2018; or
 - (u) any conspiracy to commit any offense described in any subparagraph of this paragraph.
- (2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications

by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, human trafficking, child sexual exploitation, child pornography production, prostitution, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, [marihuana] or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

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INTERNAL REVENUE CODE OF 1986

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Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

* * * * *

Subchapter A—DEFINITIONS; RATE AND PAYMENT OF TAX; EXEMPTION FROM TAX; AND REFUND AND DRAWBACK OF TAX

* * * * *

SEC. 5701. RATE OF TAX.

(a) CIGARS.—On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SMALL CIGARS.—On cigars, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) LARGE CIGARS.—On cigars weighing more than 3 pounds per thousand, a tax equal to 52.75 percent of the price for which sold but not more than 40.26 cents per cigar.

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) CIGARETTES.—On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) LARGE CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, \$105.69 per thousand; except that, if more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette.

(c) CIGARETTE PAPERS.—On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 3.15 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette paper.

(d) CIGARETTE TUBES.—On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette tube.

(e) SMOKELESS TOBACCO.—On smokeless tobacco, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SNUFF.—On snuff, \$1.51 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(2) CHEWING TOBACCO.—On chewing tobacco, 50.33 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$2.8311 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$24.78 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(h) CANNABIS PRODUCTS.—*On cannabis products, manufactured in or imported into the United States, there shall be imposed a tax equal to 5 percent of the price for which sold.*

[(h)] (i) IMPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.—The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles,

unless such import duties are imposed in lieu of internal revenue tax.

SEC. 5702. DEFINITIONS.

When used in this chapter—

(a) CIGAR.—“Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) CIGARETTE.—“Cigarette” means—

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) TOBACCO PRODUCTS.—“Tobacco products” means cigars, cigarettes, smokeless tobacco, pipe tobacco, [and roll-your-own tobacco] *roll-your-own tobacco, and cannabis products.*

(d) MANUFACTURER OF TOBACCO PRODUCTS.—“Manufacturer of tobacco products” means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, except that such term shall not include—

(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person’s own personal consumption or use, and

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer’s personal consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer’s personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

(e) CIGARETTE PAPER.—“Cigarette paper” means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) CIGARETTE TUBE.—“Cigarette tube” means cigarette paper made into a hollow cylinder for use in making cigarettes.

(g) MANUFACTURER OF CIGARETTE PAPERS AND TUBES.—“Manufacturer of cigarette papers and tubes” means any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

(h) EXPORT WAREHOUSE.—“Export warehouse” means a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the

internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(i) EXPORT WAREHOUSE PROPRIETOR.—“Export warehouse proprietor” means any person who operates an export warehouse.

(j) REMOVAL OR REMOVE.—“Removal” or “remove” means the removal of tobacco products or cigarette papers or tubes, or any processed tobacco, from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States. *In the case of a cannabis product, the previous sentence shall be applied by substituting “from a facility of a manufacturer required to file a bond under section 5711” for “from the factory or from internal revenue bond under section 5704”.*

(k) IMPORTER.—“Importer” means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes, or any processed tobacco, manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes, or any processed tobacco, into the United States.

(l) DETERMINATION OF PRICE ON CIGARS AND CANNABIS PRODUCTS.—In determining price for purposes of [section 5701(a)(2)] subsections (a)(2) and (h) of section 5701—

(1) there shall be included any charge incident to placing the article in condition ready for use,

(2) there shall be excluded—

(A) the amount of the tax imposed by this chapter or section 7652, and

(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(3) rules similar to the rules of section 4216(b) shall apply.

(m) DEFINITIONS RELATING TO SMOKELESS TOBACCO.—

(1) SMOKELESS TOBACCO.—The term “smokeless tobacco” means any snuff or chewing tobacco.

(2) SNUFF.—The term “snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

(3) CHEWING TOBACCO.—The term “chewing tobacco” means any leaf tobacco that is not intended to be smoked.

(n) PIPE TOBACCO.—The term “pipe tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

(o) ROLL-YOUR-OWN TOBACCO.—The term “roll-your-own tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered

to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

(p) MANUFACTURER OF PROCESSED TOBACCO.—

(1) IN GENERAL.—The term “manufacturer of processed tobacco” means any person who processes any tobacco other than tobacco products.

(2) PROCESSED TOBACCO.—The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

(q) CANNABIS PRODUCT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the term “cannabis product” means any cannabis or any article which contains cannabis or any derivative thereof.

(2) EXCEPTION.—The term “cannabis product” shall not include any medicine or drug that is a prescribed drug (as such term is defined in section 213(d)(3)).

(3) CANNABIS.—The term “cannabis”—

(A) means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; and

(B) does not include—

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(r) MANUFACTURER OF CANNABIS PRODUCTS.—

(1) IN GENERAL.—Any person who plants, cultivates, harvests, produces, manufactures, compounds, converts, processes, prepares, or packages any cannabis product shall be treated as a manufacturer of cannabis products (and as manufacturing such cannabis product).

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any cannabis product which is for such person’s own personal consumption or use.

(3) APPLICATION OF RULES RELATED TO MANUFACTURERS OF TOBACCO PRODUCTS.—Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of cannabis products, or to manufacturing cannabis products, respectively.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—ESTABLISHMENT OF TRUST FUNDS

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Sec. 9512. Opportunity trust fund.

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SEC. 9512. OPPORTUNITY TRUST FUND.

(a) *CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the “Opportunity Trust Fund” (referred to in this section as the “Trust Fund”), consisting of such amounts as may be appropriated or credited to such fund as provided in this section or section 9602(b).*

(b) *TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 5701(h).*

(c) *EXPENDITURES.—Amounts in the Trust Fund shall be available, without further appropriation, only as follows:*

(1) *50 percent to the Attorney General to carry out section 3052(a) of part OO of the Omnibus Crime Control and Safe Streets Act of 1968.*

(2) *10 percent to the Attorney General to carry out section 3052(b) of part OO of the Omnibus Crime Control and Safe Streets Act of 1968.*

(3) *20 percent to the Administrator of the Small Business Administration to carry out section 6(b)(1) of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.*

(4) *20 percent to the Administrator of the Small Business Administration to carry out section 6(b)(2) of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.*

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

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TITLE I—JUSTICE SYSTEM IMPROVEMENT

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PART A—OFFICE OF JUSTICE PROGRAMS

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SEC. 110. CANNABIS JUSTICE OFFICE.

(a) *ESTABLISHMENT.*—There is established within the Office of Justice Programs a Cannabis Justice Office.

(b) *DIRECTOR.*—The Cannabis Justice Office shall be headed by a Director who shall be appointed by the Assistant Attorney General for the Office of Justice Programs. The Director shall report to the Assistant Attorney General for the Office of Justice Programs. The Director shall award grants and may enter into compacts, cooperative agreements, and contracts on behalf of the Cannabis Justice Office. The Director may not engage in any employment other than that of serving as the Director, nor may the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement.

(c) *EMPLOYEES.*—

(1) *IN GENERAL.*—The Director shall employ as many full-time employees as are needed to carry out the duties and functions of the Cannabis Justice Office under subsection (d). Such employees shall be exclusively assigned to the Cannabis Justice Office.

(2) *INITIAL HIRES.*—Not later than 6 months after the date of enactment of this section, the Director shall—

(A) hire no less than one-third of the total number of employees of the Cannabis Justice Office; and

(B) no more than one-half of the employees assigned to the Cannabis Justice Office by term appointment that may after 2 years be converted to career appointment.

(3) *LEGAL COUNSEL.*—At least one employee hired for the Cannabis Justice Office shall serve as legal counsel to the Director and shall provide counsel to the Cannabis Justice Office.

(d) *DUTIES AND FUNCTIONS.*—The Cannabis Justice Office is authorized to—

(1) administer the Community Reinvestment Grant Program; and

(2) perform such other functions as the Assistant Attorney General for the Office of Justice Programs may delegate, that are consistent with the statutory obligations of this section.

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PART OO—COMMUNITY REINVESTMENT GRANT PROGRAM

SEC. 3052. AUTHORIZATION.

(a) *IN GENERAL.*—The Director of the Cannabis Justice Office shall establish and carry out a grant program, known as the “Community Reinvestment Grant Program”, to provide eligible entities with funds to administer services for individuals most adversely impacted by the War on Drugs, including—

(1) job training;

(2) reentry services;

(3) legal aid for civil and criminal cases, including expungement of cannabis convictions;

- (4) literacy programs;
 - (5) youth recreation or mentoring programs;
 - (6) health education programs; and
 - (7) services to address any collateral consequences that individuals or communities face as a result of the War on Drugs.
- (b) **SUBSTANCE USE TREATMENT SERVICES.**—*The Community Reinvestment Grant Program established in subsection (a) shall provide eligible entities with funds to administer substance use treatment services for individuals most adversely impacted by the War on Drugs.*

SEC. 3053. FUNDING FROM OPPORTUNITY TRUST FUND.

The Director shall carry out the program under this part using funds made available under section 9512(c)(1) and (2) of the Internal Revenue Code.

SEC. 3054. DEFINITIONS.

In this part:

(1) *The term “cannabis conviction” means a conviction, or adjudication of juvenile delinquency, for a cannabis offense (as such term is defined in section 13 of the Marijuana Opportunity Reinvestment and Expungement Act of 2019).*

(2) *The term “substance use treatment” means an evidence-based, professionally directed, deliberate, and planned regimen including evaluation, observation, medical monitoring, harm reduction, and rehabilitative services and interventions such as pharmacotherapy, mental health services, and individual and group counseling, on an inpatient or outpatient basis, to help patients with substance use disorder reach remission and maintain recovery.*

(3) *The term “eligible entity” means a nonprofit organization, as defined in section 501(c)(3) of the Internal Revenue Code, that is representative of a community or a significant segment of a community with experience in providing relevant services to individuals most adversely impacted by the War on Drugs in that community.*

(4) *The term “individuals most adversely impacted by the War on Drugs” has the meaning given that term in section 6 of the Marijuana Opportunity Reinvestment and Expungement Act of 2019.*

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SMALL BUSINESS ACT

* * * * *

SEC. 3. DEFINITIONS.

(a) **SMALL BUSINESS CONCERNS.**—

(1) **IN GENERAL.**—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to

be one which is independently owned and operated and which is not dominant in its field of operation.

(2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

(B) ADDITIONAL CRITERIA.—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) REQUIREMENTS.—Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 5 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) VARIATION BY INDUSTRY AND CONSIDERATION OF OTHER FACTORS.—When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) EXCLUSION OF CERTAIN SECURITY EXPENSES FROM CONSIDERATION FOR PURPOSE OF SMALL BUSINESS SIZE STANDARDS.—

(A) DETERMINATION REQUIRED.—Not later than 30 days after the date of enactment of this paragraph, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to re-

imburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) ACTION REQUIRED.—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) QUALIFIED AREAS.—In this paragraph, the term “qualified area” means—

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of the Internal Revenue Code of 1986, at the time of performance of the relevant Federal contract or subcontract.

(5) ALTERNATIVE SIZE STANDARD.—

(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) PROPOSED RULEMAKING.—In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

(A) a detailed description of the industry for which the new size standard is proposed;

(B) an analysis of the competitive environment for that industry;

(C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) COMMON SIZE STANDARDS.—In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) NUMBER OF SIZE STANDARDS.—The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9) PETITIONS FOR RECONSIDERATION OF SIZE STANDARDS.—

(A) IN GENERAL.—A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 5(i)) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) TIME LIMIT.—A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) PROCESS FOR AGENCY REVIEW.—The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) JUDICIAL REVIEW.—The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) RULES OR GUIDANCE.—The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) For purposes of this Act, any reference to an agency or department of the United States, and the term “Federal agency,” shall have the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

(c)(1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this Act, the term “qualified employee trust” means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954)—

(i) which is maintained by such concern, and

(ii) which provides that each participant is entitled to direct the plan trustee as to the manner of how to vote the qualified employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1986), which are allocated to the account of such participant with respect to a corporate matter which (by law or charter) must be decided by a vote conducted in accordance with section 409(e) of the Internal Revenue Code of 1986; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator of which enters into an agreement with the Administrator which is binding on the trust and no such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern.

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant’s account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employee of such concern, and

(B) such concern maintains a plan—

- (i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954).
 - (ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,
 - (iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and
 - (iv) which meets such other requirements (similar to requirements applicable to employee ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and
- (C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).
- (d) For purposes of section 7 of this Act, the term “qualified Indian tribe” means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern.
- (e) For purposes of section 7 of this Act, the term “public or private organization for the handicapped” means one—
- (1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not insure in whole or in part to the benefit of any shareholder or other individual;
 - (2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and
 - (3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.
- (f) For purposes of section 7 of this Act, the term “handicapped individual” means an individual—
- (1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or
 - (2) who is a service-disabled veteran.
- (g) For purposes of section 7 of this Act, the term “energy measures” includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination equipment;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) The term “credit elsewhere” means—

(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

(A) the business industry in which the loan applicant operates;

(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

(C) the adequacy of the collateral available to secure the requested loan;

(D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and

(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) For purposes of section 7 of this Act, the term “homeowners” includes owners and lessees of residential property and also includes personal property.

(j) For the purposes of this Act, the term “small agricultural cooperative” means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k)(1) For the purposes of this Act, the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 7(b)(2), the term “disaster” includes—

- (A) drought;
- (B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and
- (C) ice storms and blizzards.

(l) For purposes of this Act—

(1) the term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) DEFINITIONS RELATING TO CONTRACTING.—In this Act:

(1) PRIME CONTRACT.—The term “prime contract” has the meaning given such term in section 8701(4) of title 41, United States Code.

(2) PRIME CONTRACTOR.—The term “prime contractor” has the meaning given such term in section 8701(5) of title 41, United States Code.

(3) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41, United States Code.

(4) MICRO-PURCHASE THRESHOLD.—The term “micro-purchase threshold” has the meaning given such term in section 1902 of title 41, United States Code.

(5) TOTAL PURCHASES AND CONTRACTS FOR PROPERTY AND SERVICES.—The term “total purchases and contracts for property and services” shall mean total number and total dollar amount of contracts and orders for property and services.

(n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

(1) BUNDLED CONTRACT.—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites; or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) SEPARATE SMALLER CONTRACT.—The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) DEFINITIONS RELATING TO HUBZONES.—In this Act:

(1) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term “historically underutilized business zone” means any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas;

(E) base closure areas; or

(F) qualified disaster areas.

(2) HUBZONE.—The term “HUBZone” means a historically underutilized business zone.

(3) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone small business concern” means—

(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section

29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2));

(C) a small business concern—

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 8(a)(15)), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

(ii) that is owned in part by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns;

(E) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(F) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) QUALIFIED AREAS.—

(A) QUALIFIED CENSUS TRACT.—

(i) IN GENERAL.—The term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986.

(ii) EXCEPTION.—For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section, except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist,

whichever event occurs first.

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) REDESIGNATED AREA.—The term “redesignated area” means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a “redesignated area” only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) BASE CLOSURE AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “base closure area” means—

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(bb) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(cc) section 2687 of title 10, United States Code; or

(dd) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) LIMITATION.—A base closure area shall be treated as a HUBZone—

(I) with respect to a census tract or nonmetropolitan county described in clause (i), for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the date the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B) in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; and

(II) if such area was treated as a HUBZone at any time after 2010, until such time as the Administrator makes a final determination as to whether or not to implement the applicable des-

ignation described in subparagraph (A) or (B), after the 2020 decennial census.

(iii) DEFINITIONS.—In this subparagraph:

(I) CENSUS TRACT.—The term “census tract” means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a nonmetropolitan county and does not otherwise qualify as a qualified census tract.

(II) NONMETROPOLITAN COUNTY.—The term “nonmetropolitan county” means a county that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts and does not otherwise qualify as a qualified nonmetropolitan county.

(E) QUALIFIED DISASTER AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “qualified disaster area” means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or located in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date, except that such census tract or nonmetropolitan county may be a “qualified disaster area” only—

(I) in the case of a major disaster declared by the President, during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; and

(II) in the case of a catastrophic incident, during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

(ii) LIMITATION.—A qualified disaster area described in clause (i) shall be treated as a HUBZone for a period of not less than 8 years, beginning on the date the Administrator makes a final determination as to whether or not to implement the designations described in subparagraphs (A) and (B) in accordance with the results of the decennial census conducted after the area was initially designated as a qualified disaster area.

(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—A HUBZone small business concern is “qualified”, if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone;

(bb) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), that its principal office is located within a base closure area and that not fewer than 35 percent of its employees reside in such base closure area or in another HUBZone; or

(cc) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that the requirements of section 46 are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 31(c)(1)—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—

The Administrator shall establish and maintain a list of

qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

(A) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) ALASKA NATIVE VILLAGE.—The term “Alaska Native Village” has the same meaning as the term “Native village” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(C) INDIAN RESERVATION.—The term “Indian reservation”—

(i) has the same meaning as the term “Indian country” in section 1151 of title 18, United States Code, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of the enactment of this paragraph, unless that tribe is recognized after that date of the enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

(II) lands taken into trust or acquired by an Indian tribe after the date of the enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of the enactment; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(7) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(q) DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

(1) SERVICE-DISABLED VETERAN.—The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means any of the following:

(A) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(B) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) in the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

(C)(i) During the time period described in clause (ii), a small business concern that was a small business concern described in subparagraph (A) or (B) immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, if—

(I) the surviving spouse of the deceased veteran acquires such veteran’s ownership interest in such concern;

(II) such veteran had a service-connected disability (as defined in section 101(16) of title 38, United States Code) rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability; and

(III) immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 8127(f) of title 38, United States Code.

(ii) The time period described in this clause is the time period beginning on the date of the veteran's death and ending on the earlier of—

(I) the date on which the surviving spouse remarries;

(II) the date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(III) the date that is 10 years after the date of the death of the veteran.

(3) **SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.**—The term “small business concern owned and controlled by veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) **VETERAN.**—The term “veteran” has the meaning given the term in section 101(2) of title 38, United States Code.

(5) **RELIEF FROM TIME LIMITATIONS.**—

(A) **IN GENERAL.**—Any time limitation on any qualification, certification, or period of participation imposed under this Act on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10, United States Code, on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) **DURATION.**—Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990.—The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(6) ESOP.—The term “ESOP” has the meaning given the term “employee stock ownership plan” in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

(7) SURVIVING SPOUSE.—The term “surviving spouse” has the meaning given such term in section 101(3) of title 38, United States Code.

(r) DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

(1) SMALL BUSINESS LENDING COMPANY.—The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) NON-FEDERALLY REGULATED LENDER.—The term “non-Federally regulated lender” means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 7;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s) MAJOR DISASTER.—In this Act, the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term “small business development center” means a small business development center described in section 21.

(u) REGION OF THE ADMINISTRATION.—In this Act, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 4(a).

(v) MULTIPLE AWARD CONTRACT.—In this Act, the term “multiple award contract” means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) PRESUMPTION.—

(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, coop-

erative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) ANNUAL CERTIFICATION.—

(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.

(aa) VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) HEDGE FUND.—In this Act, the term “hedge fund” has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(cc) PRIVATE EQUITY FIRM.—In this Act, the term “private equity firm” has the meaning given the term “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(dd) DEFINITIONS PERTAINING TO SUBCONTRACTING.—In this Act:

(1) SUBCONTRACT.—The term “subcontract” means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) FIRST TIER SUBCONTRACTOR.—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor.

(3) AT ANY TIER.—The term “at any tier” means any subcontractor other than a subcontractor who is a first tier subcontractor.

(ee) PUERTO RICO BUSINESS.—In this Act, the term “Puerto Rico business” means a small business concern that has its principal office located in the Commonwealth of Puerto Rico.

(ff) CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—In this Act:

(1) CANNABIS.—The term “cannabis”—

(A) means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound,

manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; and

(B) does not include—

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(2) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term “cannabis-related legitimate business” means a manufacturer, producer, or any person or company that is a small business concern and that—

(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State, as determined by such State or political sub-division; and

(B) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

(3) SERVICE PROVIDER.—The term “service provider”—

(A) means a business, organization, or other person that—

(i) sells goods or services to a cannabis-related legitimate business; or

(ii) provides any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis; and

(B) does not include a business, organization, or other person that participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

* * * * *

SEC. 7. (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 Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaran-

teed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—

(i) IN GENERAL.—The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere. 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, 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 estab-

lishing priorities in approving loan guarantee requests under this subsection.

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.

(iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term “Preferred Lenders Program” means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—In an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be 90 percent.

(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(3) No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed \$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000 may be

used for working capital, supplies, or financings under section 7(a)(14) for export purposes; and

(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed \$350,000.

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) PREPAYMENT CHARGES.—

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

- (I) the loan is for a term of not less than 15 years;
- (II) the prepayment is voluntary;

(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however, That—*

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining “sound value” shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further, That* such status need not be as sound as that required for general loans under this subsection; and

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further, That* any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by dis-

abled veterans (as defined in section 4211(3) of title 38, United States Code).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale; *Provided, however*, That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12)(A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures; *Provided, however*, That such loan proceeds shall not be used primarily for research and development.

(b) The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than \$1,000,000.

(13) The Administration may provide financing under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

(14) EXPORT WORKING CAPITAL PROGRAM.—

(A) IN GENERAL.—The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B) TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii) FEES.—

(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee as-

essed under paragraph (23) not more frequently than once each year.

(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

(C) CONSIDERATIONS.—When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

(15)(A) The Administration may guarantee loans under this subsection—

(i) to qualified employee trusts with respect to a small business concern for the purpose of purchasing, and for any transaction costs associated with purchasing, stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern; and

(ii) to a small business concern under a plan approved by the Administrator, if the proceeds from the loan are only used to make a loan to a qualified employee trust, and for any transaction costs associated with making that loan, that results in the qualified employee trust owning at least 51 percent of the small business concern.

(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust or by the small business concern with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated,

(iii) there will be adequate management to assure management expertise and continuity, and

(iv) with respect to a loan made to a trust, or to a cooperative in accordance with paragraph (35)—

(I) a seller of the small business concern may remain involved as an officer, director, or key employee of the small business concern when a qualified em-

ployee trust or cooperative has acquired 100 percent of ownership of the small business concern; and

(II) any seller of the small business concern who remains as an owner of the small business concern, regardless of the percentage of ownership interest, shall be required to provide a personal guarantee by the Administration.

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration, which shall include—

(i) the total number of loans made to employee-owned business concerns that were guaranteed by the Administrator under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), including the number of loans made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives;

(ii) the total number of financings made to employee-owned business concerns by companies licensed under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 696(c)), including the number of financings made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives; and

(iii) any outreach and educational activities conducted by the Administration with respect to employee-owned business concerns.

(F) A small business concern that makes a loan to a qualified employee trust under subparagraph (A)(ii) is not required to contain the same terms and conditions as the loan made to the small business concern that is guaranteed by the Administration under such subparagraph.

(G) With respect to a loan made to a qualified employee trust under this paragraph, or to a cooperative in accordance

with paragraph (35), the Administrator may, as deemed appropriate, elect to not require any mandatory equity to be provided by the qualified employee trust or cooperative to make the loan.

(16) INTERNATIONAL TRADE.—

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern—

(i) in the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade;

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection; or

(iii) by providing working capital.

(B) SECURITY.—

(i) IN GENERAL.—Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii) EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.

(F) LIST OF EXPORT FINANCE LENDERS.—

(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

- (I) this paragraph;
- (II) paragraph (14); or
- (III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall—

(I) post the list published under clause (i) on the website of the Administration; and

(II) make the list published under clause (i) available, upon request, at each district office of the Administration.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lend-

ers, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) Authority to liquidate loans.—

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii) Automatic approval.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

(iii) the term of which is not more than twenty-five years; and

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

(D) For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23) YEARLY FEE.—

(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(B) PAYER.—The yearly fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i)

through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.

(24) NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) PILOT PROGRAM DEFINED.—In this paragraph, the term “pilot program” means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing loans under this Act.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

(29) REAL ESTATE APPRAISALS.—

(A) IN GENERAL.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(i) shall be required by the Administration in connection with any such loan, if such loan is in an amount greater than the Federal banking regulator appraisal threshold; or

(ii) may be required by the Administration or the lender in connection with any such loan, if such loan

is in an amount equal to or less than the Federal banking regulator appraisal threshold, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(B) FEDERAL BANKING REGULATOR APPRAISAL THRESHOLD DEFINED.—For purposes of this paragraph, the term “Federal banking regulator appraisal threshold” means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(31) EXPRESS LOANS.—

(A) DEFINITIONS.—As used in this paragraph:

(i) The term “disaster area” means the area for which the President has declared a major disaster, during the 5-year period beginning on the date of the declaration.

(ii) The term “express lender” means any lender authorized by the Administration to participate in the Express Loan Program.

(iii) The term “express loan” means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iv) The term “Express Loan Program” means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F) EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “biomass”—

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

(DD) plants (including aquatic plants and grasses);

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or

(BB) unsegregated solid waste;

(II) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term “renewable energy system” means a system of energy derived from—

(aa) a wind, solar, biomass (including biodiesel), or geothermal source; or

(bb) hydrogen derived from biomass or water using an energy source described in item (aa).

(ii) LOANS.—The Administrator may make a loan under the Express Loan Program for the purpose of—

(I) purchasing a renewable energy system; or

(II) carrying out an energy efficiency project for a small business concern.

(G) GUARANTEE FEE WAIVER FOR VETERANS.—

(i) GUARANTEE FEE WAIVER.—The Administrator may not collect a guarantee fee described in paragraph (18) in connection with a loan made under this paragraph to a veteran or spouse of a veteran on or after October 1, 2015.

(ii) EXCEPTION.—If the President’s budget for the upcoming fiscal year, submitted to Congress pursuant

to section 1105(a) of title 31, United States Code, includes a cost for the program established under this subsection that is above zero, the requirements of clause (i) shall not apply to loans made during such upcoming fiscal year.

(iii) DEFINITION.—In this subparagraph, the term “veteran or spouse of a veteran” means—

(I) a veteran, as defined in section 3(q)(4);

(II) an individual who is eligible to participate in the Transition Assistance Program established under section 1144 of title 10, United States Code;

(III) a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code;

(IV) the spouse of an individual described in subclause (I), (II), or (III); or

(V) the surviving spouse (as defined in section 101 of title 38, United States Code) of an individual described in subclause (I), (II), or (III) who died while serving on active duty or as a result of a disability that is service-connected (as defined in such section).

(H) RECOVERY OPPORTUNITY LOANS.—

(i) IN GENERAL.—The Administrator may guarantee an express loan to a small business concern located in a disaster area in accordance with this subparagraph.

(ii) MAXIMUMS.—For a loan guaranteed under clause (i)—

(I) the maximum loan amount is \$150,000; and

(II) the guarantee rate shall be not more than 85 percent.

(iii) OVERALL CAP.—A loan guaranteed under clause (i) shall not be counted in determining the amount of loans made to a borrower for purposes of subparagraph (D).

(iv) OPERATIONS.—A small business concern receiving a loan guaranteed under clause (i) shall certify that the small business concern was in operation on the date on which the applicable major disaster occurred as a condition of receiving the loan.

(v) REPAYMENT ABILITY.—A loan guaranteed under clause (i) may only be made to a small business concern that demonstrates, to the satisfaction of the Administrator, sufficient capacity to repay the loan.

(vi) TIMING OF PAYMENT OF GUARANTEES.—

(I) IN GENERAL.—Not later than 90 days after the date on which a request for purchase is filed with the Administrator, the Administrator shall determine whether to pay the guaranteed portion of the loan.

(II) RECAPTURE.—Notwithstanding any other provision of law, unless there is a subsequent finding of fraud by a court of competent jurisdiction relating to a loan guaranteed under clause (i), on and after the date that is 6 months after the date on which the Administrator determines to pay the guaranteed portion of the loan, the Administrator may not attempt to recapture the paid guarantee.

(vii) FEES.—

(I) IN GENERAL.—Unless the Administrator has waived the guarantee fee that would otherwise be collected by the Administrator under paragraph (18) for a loan guaranteed under clause (i), and except as provided in subclause (II), the guarantee fee for the loan shall be equal to the guarantee fee that the Administrator would collect if the guarantee rate for the loan was 50 percent.

(II) EXCEPTION.—Subclause (I) shall not apply if the cost of carrying out the program under this subsection in a fiscal year is more than zero and such cost is directly attributable to the cost of guaranteeing loans under clause (i).

(viii) RULES.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall promulgate rules to carry out this subparagraph.

(32) LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

(ii) the term “covered energy efficiency loan” means a loan—

(I) made under this subsection; and

(II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term “pilot program” means the pilot program established under subparagraph (B)

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33) INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

(ii) the term “pilot program” means the pilot program established under subparagraph (B); and

(iii) the term “veteran participation loan” means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on

loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of veteran participation loans for which fees were reduced under the pilot program;

(II) a description of the impact of the pilot program on the program under this subsection;

(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(IV) recommendations for improving the pilot program.

(34) EXPORT EXPRESS PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “export development activity” includes—

(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

(II) participation in a trade show that takes place outside the United States;

(III) translation of product brochures or catalogues for use in markets outside the United States;

(IV) obtaining a general line of credit for export purposes;

(V) performing a service contract from buyers located outside the United States;

(VI) obtaining transaction-specific financing associated with completing export orders;

(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term “express loan” means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

(B) AUTHORITY.—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) LEVEL OF PARTICIPATION.—

(i) MAXIMUM AMOUNT.—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

(ii) PERCENTAGE.—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

(I) 90 percent of a loan that is not more than \$350,000; and

(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.

(35) LOANS TO COOPERATIVES.—

(A) DEFINITION.—In this paragraph, the term “cooperative” means an entity that is determined to be a cooperative by the Administrator, in accordance with applicable Federal and State laws and regulation.

(B) AUTHORITY.—The Administration shall guarantee loans made to a cooperative for the purpose described in paragraph (15).

(36) *LOANS TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.*—*The Administrator may not decline to provide a guarantee for a loan under this subsection to an otherwise eligible small business concern solely because such concern is a cannabis-related legitimate business or service provider.*

(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters: *Provided*, That such damage or destruction is not compensated for by insurance or otherwise: *And provided further*, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise) if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including—

(i) construction of retaining walls and sea walls;

- (ii) grading and contouring land; and
 - (iii) relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency;
- (B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and
- (C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;
- (2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern, private nonprofit organization, or small agricultural cooperative located in an area affected by a disaster, (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration determines that the concern, the organization, or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—
- (A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or
 - (B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph; or

(C) a disaster, as determined by the Administrator of the Small Business Administration; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

(3)(A) In this paragraph—

(i) the term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

(ii) the term “period of military conflict” has the meaning given the term in subsection (n)(1); and

(iii) the term “substantial economic injury” means an economic harm to a business concern that results in the inability of the business concern—

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 1 year after the date on which such essential employee is discharged or released from active duty. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed \$1,500,000, unless such applicant constitutes, or have become due to changed economic circumstances, a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the \$1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

(G)(i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than \$50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

(I) the 1-year period beginning on the date of the initial disbursement of the loan; and

(II) the period during which the relevant essential employee is on active duty.

(H) The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

(4) COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this Act correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on

Small Business of the House of Representatives a report that includes—

(i) the deadline for submitting applications for assistance under this Act relating to that major disaster;

(ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and

(iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all relevant information needed by disaster loan applicants, including—

(A) the date of such declaration;

(B) cities and towns within the area of such declaration;

(C) loan application deadlines related to such disaster;

(D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);

(E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;

(F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and

(G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(6) AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.—

(A) DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) LOAN LOSS VERIFICATION SERVICES.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligi-

bility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7) DISASTER ASSISTANCE EMPLOYEES.—

(A) IN GENERAL.—In carrying out this section, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

(i) in the Office of the Disaster Assistance is not fewer than 800; and

(ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) REPORT.—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives, a report—

(i) detailing staffing levels on that date;

(ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and

(iii) containing such additional information, as determined appropriate by the Administrator.

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed \$2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9) DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

(i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastruc-

ture, environment, economy, national morale, or government functions in an area;

(ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and

(iii) be of such size and scope that—

(I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or

(II) a significant number of business concerns outside the disaster area have suffered disaster-related substantial economic injury as a result of the incident.

(C) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) LOAN TERMS.—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) DEFINITIONS.—In this paragraph—

(i) the term “disaster area” means the area for which the applicable major disaster was declared;

(ii) the term “disaster-related substantial economic injury” means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term “eligible small business concern” means a small business concern—

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II)(aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

(10) REDUCING CLOSING AND DISBURSEMENT DELAYS.—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.

(11) INCREASING TRANSPARENCY IN LOAN APPROVALS.—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.

(12) ADDITIONAL AWARDS TO SMALL BUSINESS DEVELOPMENT CENTERS, WOMEN’S BUSINESS CENTERS, AND SCORE FOR DISASTER RECOVERY.—

(A) IN GENERAL.—The Administration may provide financial assistance to a small business development center, a women’s business center described in section 29, the Service Corps of Retired Executives, or any proposed consortium of such individuals or entities to spur disaster recovery and growth of small business concerns located in an area for which the President has declared a major disaster.

(B) FORM OF FINANCIAL ASSISTANCE.—Financial assistance provided under this paragraph shall be in the form of a grant, contract, or cooperative agreement.

(C) NO MATCHING FUNDS REQUIRED.—Matching funds shall not be required for any grant, contract, or cooperative agreement under this paragraph.

(D) REQUIREMENTS.—A recipient of financial assistance under this paragraph shall provide counseling, training, and other related services, such as promoting long-term resiliency, to small business concerns and entrepreneurs impacted by a major disaster.

(E) PERFORMANCE.—

(i) IN GENERAL.—The Administrator, in cooperation with the recipients of financial assistance under this paragraph, shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises, and establishment of new small business concerns.

(ii) USE OF ESTIMATES.—The Administrator shall base the goals and metrics for performance established under clause (i), in part, on the estimates of disaster impact prepared by the Office of Disaster Assistance for purposes of estimating loan-making requirements.

(F) TERM.—

(i) IN GENERAL.—The term of any grant, contract, or cooperative agreement under this paragraph shall be for not more than 2 years.

(ii) EXTENSION.—The Administrator may make 1 extension of a grant, contract, or cooperative agreement under this paragraph for a period of not more than 1 year, upon a showing of good cause and need for the extension.

(G) EXEMPTION FROM OTHER PROGRAM REQUIREMENTS.—Financial assistance provided under this paragraph is in addition to, and wholly separate from, any other form of assistance provided by the Administrator under this Act.

(H) COMPETITIVE BASIS.—The Administration shall award financial assistance under this paragraph on a competitive basis.

(13) SUPPLEMENTAL ASSISTANCE FOR CONTRACTOR MALFEASANCE.—

(A) IN GENERAL.—If a contractor or other person engages in malfeasance in connection with repairs to, rehabilitation of, or replacement of real or personal property relating to which a loan was made under this subsection and the malfeasance results in substantial economic damage to the recipient of the loan or substantial risks to health or safety, upon receiving documentation of the substantial economic damage or the substantial risk to health and safety from an independent loss verifier, and subject to

subparagraph (B), the Administrator may increase the amount of the loan under this subsection, as necessary for the cost of repairs, rehabilitation, or replacement needed to address the cause of the economic damage or health or safety risk.

(B) REQUIREMENTS.—The Administrator may only increase the amount of a loan under subparagraph (A) upon receiving an appropriate certification from the borrower and person performing the mitigation attesting to the reasonableness of the mitigation costs and an assignment of any proceeds received from the person engaging in the malfeasance. The assignment of proceeds recovered from the person engaging in the malfeasance shall be equal to the amount of the loan under this section. Any mitigation activities shall be subject to audit and independent verification of completeness and cost reasonableness.

(14) BUSINESS RECOVERY CENTERS.—

(A) IN GENERAL.—The Administrator, acting through the district offices of the Administration, shall identify locations that may be used as recovery centers by the Administration in the event of a disaster declared under this subsection or a major disaster.

(B) REQUIREMENTS FOR IDENTIFICATION.—Each district office of the Administration shall—

(i) identify a location described in subparagraph

(A) in each county, parish, or similar unit of general local government in the area served by the district office; and

(ii) ensure that the locations identified under subparagraph (A) may be used as a recovery center without cost to the Government, to the extent practicable.

(15) INCREASED OVERSIGHT OF ECONOMIC INJURY DISASTER LOANS.—The Administrator shall increase oversight of entities receiving loans under paragraph (2), and may consider—

(A) scheduled site visits to ensure borrower eligibility and compliance with requirements established by the Administrator; and

(B) reviews of the use of the loan proceeds by an entity described in paragraph (2) to ensure compliance with requirements established by the Administrator.

(16) ASSISTANCE TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—*The Administrator may not decline to provide assistance under this subsection to an otherwise eligible borrower solely because such borrower is a cannabis-related legitimate business or service provider.*

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or

replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (d) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b), shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than \$2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. No later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committee of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on en-

couraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1) and (2) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such project is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed \$2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed \$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph, the Administrator shall—

(i) make sure change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

(E) A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act to a disaster loan under paragraph (1)(2) of this subsection.

(c) PRIVATE DISASTER LOANS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “disaster area” means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

(B) the term “eligible individual” means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

(C) the term “eligible small business concern” means a business concern that is—

(i) a small business concern, as defined under this Act; or

(ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958;

(D) the term “preferred lender” means a lender participating in the Preferred Lender Program;

(E) the term “Preferred Lender Program” has the meaning given that term in subsection (a)(2)(C)(ii); and

(F) the term “qualified private lender” means any privately-owned bank or other lending institution that—

(i) is not a preferred lender; and

(ii) the Administrator determines meets the criteria established under paragraph (10).

(2) PROGRAM REQUIRED.—The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.

(3) USE OF LOANS.—A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).

(4) ONLINE APPLICATIONS.—

(A) ESTABLISHMENT.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.

(B) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.

(C) CONSULTATION.—In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.

(5) MAXIMUM AMOUNTS.—

(A) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this subsection.

(B) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this subsection shall be \$2,000,000.

(6) TERMS AND CONDITIONS.—A loan guaranteed under this subsection shall be made under the same terms and conditions as a loan under subsection (b).

(7) LENDERS.—

(A) IN GENERAL.—A loan guaranteed under this subsection made to—

(i) a qualified individual may be made by a preferred lender; and

(ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.

(B) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:

(i) Exclude the preferred lender from participating in the program under this subsection.

(ii) Exclude the preferred lender from participating in the Preferred Lender Program for a period of not more than 5 years.

(8) FEES.—

(A) IN GENERAL.—The Administrator may not collect a guarantee fee under this subsection.

(B) ORIGINATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an

amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.

(9) DOCUMENTATION.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) IMPLEMENTATION REGULATIONS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(11) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND CONDITIONS.—Funds appropriated to the Administration to carry out this subsection, may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

(12) PURCHASE OF LOANS.—The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in

order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such time (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior the effective date of this Act, on the Administration's share of loans made pursuant to paragraph (1) of subsection (b)—

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first \$55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from one-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks and other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the cur-

rent average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner, able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7 years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than \$100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than \$20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further*, That the Administration shall not require collateral for loans of \$25,000 or less (or such higher amount as the Administrator determines appropriate in the event of a disaster) which are made under paragraph (1) of subsection (b): *Provided further*, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: *Provided further*, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the

type) of such collateral. Employees of concerns sharing a common business premises shall be aggregated in determining “major source of employment” status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term “an area affected by a disaster” includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

(8) DISASTER LOANS FOR SUPERSTORM SANDY.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, nonprofit entity, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.

(C) INSPECTOR GENERAL REVIEW.—Not later than 6 months after the date on which the Administrator begins carrying out this authority, the Inspector General of the Administration shall initiate a review of the controls for ensuring applicant eligibility for loans made under this paragraph.

(e) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.

(f) ADDITIONAL REQUIREMENTS FOR 7(b) LOANS.—

(1) INCREASED DEFERMENT AUTHORIZED.—

(A) IN GENERAL.—In making loans under subsection (b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) PERIOD.—The period of a deferment under subparagraph (A) may not exceed 4 years.

(g) NET EARNINGS CLAUSES PROHIBITED FOR 7(b) LOANS.—In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(e) [RESERVED].

(f) [RESERVED].

(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed \$350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i)(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in

not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into con-

sideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however*, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3142); and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection when the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j)(1) the Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designated to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), (7)(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperative; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing man-

agement training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in area of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under section 7(i), 7(j), and 8(a), of this Act.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

(10) There is established with the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financing counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the plan”) as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall

be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 8(a).

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a).

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to

clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

(F) For the purposes of section and 8(a), the terms “terminated” or “termination” means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation in term. An action for termination shall be based upon good cause, including—

(i) the failure by such concern to maintain its eligibility for Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48,

Code of Federal Regulations (or any successor regulation);
or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

(H) For the purposes of sections 7(j) and 8(a) the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii);

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration

may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to ob-

tain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988", shall be eligible for award of a contract pursuant to section 8(a).

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been ad-

mitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

(A) Contract support pursuant to section 8(a).

(B) Financial assistance pursuant to section 7(a)(20).

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled “An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes”, approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be

made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of the Act entitled “An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works”, approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant’s employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term “training provider” shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies

working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F)(i) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

(ii)(I) In this clause—

(aa) the term "covered period" means the 2-year period beginning on the date on which the President declared the applicable major disaster; and

(bb) the term "disaster area" means the area for which the President has declared a major disaster, during the covered period.

(II) The Administrator may transfer technology or surplus property under clause (i) on a priority basis to a small business concern located in a disaster area if—

(aa) the small business concern meets the requirements for such a transfer, without regard to whether the small business concern is a Program Participant; and

(bb) for a small business concern that is a Program Participant, on and after the date on which the President declared the applicable major disaster, the small business concern has not received property under this subparagraph on the basis of the status of the small business concern as a Program Participant.

(III) For any transfer of property under this clause to a small business concern, the terms and conditions shall be the same as a transfer to a Program Participant, except that the small business concern shall agree not to sell or transfer the property to any party other than the Federal Government during the covered period.

(IV) A small business concern that receives a transfer of property under this clause may not receive a transfer of property under clause (i) during the covered period.

(V) If a small business concern sells or transfers property in violation of the agreement described in subclause (III), the Administrator may initiate proceedings to prohibit the small business concern from receiving a transfer of property under this clause or clause (i), in addition to any other remedy available to the Administrator.

(iii)(I) In this clause, the term “covered period” means the period beginning on the date of enactment of this clause and ending on the date on which the Oversight Board established under section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. 2121) terminates.

(II) The Administrator may transfer technology or surplus property under clause (i) to a Puerto Rico business if the Puerto Rico business meets the requirements for such a transfer, without regard to whether the Puerto Rico business is a Program Participant.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and

gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k) In carrying out its functions under subsections 7(i), 7(j), and 8(a) of this Act, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)); and

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) authorized by section 5 of such Act (5 U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

(1) DEFINITIONS.—In this subsection—

(A) the term “eligible intermediary”—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

(I) a private, nonprofit community development corporation;

(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

(B) the term “Program” means the small business intermediary lending pilot program established under paragraph (2).

(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) PURPOSES.—The purposes of the Program are—

(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

(i) the type of small business concerns to be assisted;

(ii) the size and range of loans to be made;

(iii) the interest rate and terms of loans to be made;

(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

(vi) the qualifications of the applicant to carry out this subsection.

(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

- (i) to not more than 20 eligible intermediaries; and
- (ii) in a total amount of not more than \$20,000,000.

(5) LOANS TO SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.

(m) MICROLOAN PROGRAM.—

(1)(A) PURPOSES.—The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 3(q)), and minority entrepreneurs and business owners and other individuals possessing the capability to operate successful business concerns;

(ii) to assist small business concerns in those areas suffering from a lack of credit due to economic downturns;

(iii) to establish a microloan program to be administered by the Small Business Administration—

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than \$10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

(I) establishing small businesses; and

(II) eliminating their dependence on that assistance.

(B) ESTABLISHMENT.—There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly

established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed \$50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

(A) meets the definition in paragraph (10); and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) LOANS TO INTERMEDIARIES.—

(A) INTERMEDIARY APPLICATIONS.—(i) IN GENERAL.—As part of its application for a loan, each intermediary shall submit a description to the Administration of—

(I) the type of businesses to be assisted;

(II) the size and range of loans to be made;

(III) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

(ii) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than \$10,000.

(B) INTERMEDIARY CONTRIBUTION.—As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(C) LOAN LIMITS.—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed \$750,000 in the first year of such intermediary's participation in the program, and \$6,000,000 in the remaining years of the intermediary's participation in the program.

(D)(i) IN GENERAL.—The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

(ii) LEVEL OF LOAN LOSS RESERVE FUND.—

(I) IN GENERAL.—Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(II) REVIEW OF LOAN LOSS RESERVE.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(III) REDUCTION OF LOAN LOSS RESERVE.—Subject to the requirements of clause IV, the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

(IV) REQUIREMENTS.—The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that no other factors exist that may impair the ability of the intermediary to repay all

obligations owed to the Administration under this subsection.

(E) UNAVAILABILITY OF COMPARABLE CREDIT.—An intermediary may make a loan under this subsection of more than \$20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than \$50,000, or have outstanding or committed to any 1 borrower more than \$50,000.

(F) LOAN DURATION; INTEREST RATES.—

(i) LOAN DURATION.—Loans made by the Administration under this subsection shall be for a term of 10 years.

(ii) APPLICABLE INTEREST RATES.—Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than \$7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iv) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

(v) RATE BASIS.—The applicable rate of interest under this paragraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vi) COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

(G) DELAYED PAYMENTS.—The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(H) FEES; COLLATERAL.—Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

(B) CONTRIBUTION.—As a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(i) IN GENERAL.—In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

(II) the intermediary has a portfolio of loans made under this subsection that averages not more than \$10,000 during the period of the intermediary's participation in the program.

(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

(iii) CONTRIBUTION EXCEPTION.—The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

(D) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.—The eligibility for a grant described in subparagraph (A) or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(i) IN GENERAL.—Each intermediary may expend an amount not to exceed 50 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than 50 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F) SUPPLEMENTAL GRANT.—

(i) IN GENERAL.—The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

(ii) ELIGIBLE RECIPIENTS; GRANT AMOUNTS.—In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed \$200,000 per year.

(iii) USE OF GRANT AMOUNTS.—Grants under this subparagraph—

(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

(II) may be used by a grantee—

(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care De-

velopment Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) MEMORANDUM OF UNDERSTANDING.—Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(5) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed \$200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

(A) IN GENERAL.—An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) PORTFOLIO REQUIREMENT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than \$15,000.

(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State per-

taining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) REVIEW RESTRICTION.—The Administration shall not review individual microloans made by intermediaries prior to approval.

(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) PROGRAM FUNDING FOR MICROLOANS.—

(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) ALLOCATION.—

(i) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) \$800,000; or

(bb) $\frac{1}{55}$ of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

(ii) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8) **EQUITABLE DISTRIBUTION OF INTERMEDIARIES.**—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(9) **GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.**—

(A) **IN GENERAL.**—The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of micro-lending practices necessary to operate successful microloan programs.

(B) **ASSISTANCE AMOUNT.**—The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing. to achieve the purpose set forth in subparagraph (A).

(C) **WELFARE-TO-WORK MICROLOAN INITIATIVE.**—Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

(10) **REPORT TO CONGRESS.**—On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3½ years of the microloan program and the following:

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

- (G) any recommendations for legislative changes that would improve program operations.
- (11) DEFINITIONS.—For purposes of this subsection—
- (A) the term “intermediary” means—
- (i) a private, nonprofit entity;
 - (ii) a private, nonprofit community development corporation;
 - (iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;
 - (iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—
 - (I) no application is received from an eligible nonprofit organization; or
 - (II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or
 - (v) an agency of or nonprofit entity established by a Native American Tribal Government, that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;
- (B) the term “microloan” means a short-term, fixed rate loan of not more than \$50,000, made by an intermediary to a startup, newly established, or growing small business concern;
- (C) the term “rural area” means any political subdivision or unincorporated area—
- (i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or
 - (ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural; and
- (D) the term “economically distressed area”, as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.
- (12) DEFERRED PARTICIPATION LOAN PILOT.—In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions:

(A) NUMBER OF LOANS.—In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(B) TERM OF LOANS.—The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

(C) INTEREST RATE.—The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13) EVALUATION OF WELFARE-TO-WORK MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).

(14) ASSISTANCE TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—*An eligible intermediary may not decline to provide assistance under this subsection to an otherwise eligible borrower solely because such borrower is a cannabis-related legitimate business or service provider.*

(n) REPAYMENT DEFERRED FOR ACTIVE DUTY RESERVISTS.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE RESERVIST.—The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(B) ESSENTIAL EMPLOYEE.—The term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

(C) PERIOD OF MILITARY CONFLICT.—The term “period of military conflict” means—

(i) a period of war declared by the Congress;

(ii) a period of national emergency declared by the Congress or by the President; or

(iii) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code.

(D) QUALIFIED BORROWER.—The term “qualified borrower” means—

(i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) before being ordered to active duty; or

(ii) a small business concern that received a direct loan under subsection (a) or (b) before an eligible reservist, who is an essential employee, was ordered to active duty.

(2) DEFERRAL OF DIRECT LOANS.—

(A) IN GENERAL.—The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b), if such loan was incurred by a qualified borrower.

(B) PERIOD OF DEFERRAL.—The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

(C) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

(3) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The Administration shall—

(A) encourage intermediaries participating in the program under subsection (m) to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3); and

(B) not later than 30 days after the date of the enactment of this subsection, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) and financings under section 504 of the Small Business Investment Act of 1958 that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

SEC. 8. (a)(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such

terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on

the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled “An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,” approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition or receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

(D) that small business is determined to be a start-up concern and such concern has not been participating in any pro-

gram conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a “fair market price” shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term “socially and economically disadvantaged small business concern” means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine

whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(G) subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classi-

fication codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

(B) The actions referred to in subparagraph (A) are—

- (i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);
- (ii) a termination pursuant to section 7(j)(10)(F);
- (iii) a graduation pursuant to section 7(j)(10)(G); and
- (iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

- (i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;
- (ii) is untimely filed;
- (iii) is not filed in accordance with the rules of procedure governing such proceedings; or
- (iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Pro-

gram Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(15) For purposes of this subsection, the term “Native Hawaiian Organization” means any community service organization serving Native Hawaiians in the State of Hawaii which—

(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant’s business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 15(a), section 31, or section 36, solely be-

cause such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(C) LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

- (ii) The employees referred to in clause (i) are—
- (I) regional administrators;
 - (II) district directors;
 - (III) the Associate Administrator for Minority Small Business and Capital Ownership Development;
 - (IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and
 - (V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered “good cause” for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency’s program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C) The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

(1)(A) to provide—

(i) technical, managerial, and informational aids to small business concerns—

(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(II) by cooperating and advising with—

(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

(bb) other Federal and State agencies;

(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

(ii) through cooperation with a profit-making concern (referred to in this paragraph as a “cosponsor”), training, information, and education to small business concerns, except that the Administration shall—

(I) take such actions as it determines to be appropriate to ensure that—

(aa) the Administration receives appropriate recognition and publicity;

(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

(dd) utilization of any one cosponsor in a marketing area is minimized; and

(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

(bb) the terms and conditions of the cooperation shall be specified;

(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of section 8(b)(1)(A) of this Act. To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received. *The head of the SCORE program established under this subparagraph may not decline to provide services to an otherwise eligible small business concern solely because such concern is a cannabis-related legitimate business or service provider.*

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic service:

(i) such volunteers, while carrying out activities under section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee:

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to section 8(b)(1) of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall provide, counsel may be employed and counsel fees, court costs, bail, and

other expenses incidental to the defense of volunteers may be paid in judicial or Administrative proceedings arising directly out of the performance of activities pursuant to section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988, the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperative with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting sub-contracts and to take action to encourage the letting of sub-contracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) if a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, United States Code (the Walsh-Healey Public Contracts Act), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) in any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies 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, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5, United States Code, to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of 1949) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the

establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38, United States Code), veterans, and members of a reserve component of the Armed Forces.

(c) [Reserved.]

(d)(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

(C) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(D) The term "small business concern owned and controlled by women" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

(ii) whose management and daily business operations are controlled by one or more women.

(E) The term "small business concern owned and controlled by veterans" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and eco-

nomically disadvantaged individuals, or a small business concern owned and controlled by women.

(G) In this contract, the term “qualified HUBZone small business concern” has the meaning given that term in section 3(p) of the Small Business Act.

(H) In this contract, the term “small business concern owned and controlled by service-disabled veterans” has the meaning given that term in section 3(q).

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities, the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provisions of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business

concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

- (iv) acknowledge receipt of their subcontractors' reports;
 - (v) compare the performance of their subcontractors to subcontracting plans and goals; and
 - (vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;
- (E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan;
- (F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;
- (G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D) of this paragraph, including—
- (i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and
 - (ii) efforts to identify and award subcontracts to such small business concerns; and
- (H) a representation that the offeror or bidder will—
- (i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and
 - (ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).
- (7) The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

(8) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(9) MATERIAL BREACH.—The failure of any contractor or subcontractor to comply in good faith with—

(A) the clause contained in paragraph (3) of this subsection,

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract, or

(C) assurances provided under paragraph (6)(E), shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.

(10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(11) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the pilot Mentor-Protege Program established pursuant to section

831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2301 note) shall be granted credit for such assistance in accordance with subsection (g) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term “covered contract” means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

(E) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SUBCONTRACTORS.—

(A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor shall receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more executive agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.

(B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).

(17) PILOT PROGRAM PROVIDING PAST PERFORMANCE RATINGS FOR OTHER SMALL BUSINESS SUBCONTRACTORS.—

(A) ESTABLISHMENT.—The Administrator shall establish a pilot program for a small business concern without a past performance rating as a prime contractor performing as a first tier subcontractor for a covered contract (as defined in paragraph (13)(A)) to request a past performance rating in the system used by the Federal Government to monitor or record contractor past performance.

(B) APPLICATION.—A small business concern described in subparagraph (A) shall submit an application to the appropriate official for a past performance rating no later than 270 days after the small business concern completed the work for which it seeks a past performance rating or 180 days after the prime contractor completes work on the covered contract, whichever is earlier. Such application shall include written evidence of the past performance factors for which the small business concern seeks a rating and a suggested rating.

(C) DETERMINATION.—The appropriate official shall submit the application from the small business concern to the Office of Small and Disadvantaged Business Utilization for the covered contract and to the prime contractor for review. The Office of Small and Disadvantaged Business Utilization and the prime contractor shall, not later than 30 days after receipt of

the application, submit to the appropriate official a response regarding the application.

(i) AGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor agree on a past performance rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person agrees with the rating of the applicant small business concern, the appropriate official shall enter the agreed-upon past performance rating in the system described in subparagraph (A).

(ii) DISAGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor fail to respond within 30 days or if they disagree about the rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person disagrees with the rating of the applicant small business concern, the Office of Small and Disadvantaged Business Utilization or the prime contractor shall submit a notice contesting the application to the appropriate official. The appropriate official shall follow the requirements of subparagraph (D).

(D) PROCEDURE FOR RATING.—Not later than 14 calendar days after receipt of a notice under subparagraph (C)(ii), the appropriate official shall submit such notice to the applicant small business concern. Such concern may submit comments, rebuttals, or additional information relating to the past performance of such concern not later 14 calendar days after receipt of such notice. The appropriate official shall enter into the system described in subparagraph (A) a rating that is neither favorable nor unfavorable along with the initial application from such concern, any responses of the Office of Small and Disadvantaged Business Utilization and the prime contractor, and any additional information provided by such concern. A copy of the information submitted shall be provided to the contracting officer (or designee of such officer) for the covered contract.

(E) USE OF INFORMATION.—A small business subcontractor may use a past performance rating given under this paragraph to establish its past performance for a prime contract.

(F) DURATION.—The pilot program established under this paragraph shall terminate 3 years after the date on which the first applicant small business concern receives a past performance rating for performance as a first tier subcontractor.

(G) REPORT.—The Comptroller General of the United States shall begin an assessment of the pilot program 1 year after the establishment of such program. Not later than 6 months after beginning such assessment, the Comptroller General shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, which shall include—

(i) the number of small business concerns and, set forth separately, the number of small business exporters, that have received past performance ratings under the pilot program;

(ii) the number of applications, set forth separately by applications from small business concerns and from small business exporters, in which the contracting officer (or designee) or the prime contractor contested the application of the small business concern;

(iii) any suggestions or recommendations the Comptroller General or the small business concerns participating in the program have to address disputes between the small business concern, the contracting officer (or designee), and the prime contractor on past performance ratings;

(iv) the number of small business concerns awarded prime contracts after receiving a past performance rating under this pilot program; and

(v) any suggestions or recommendation the Comptroller General has to improve the operation of the pilot program.

(H) DEFINITIONS.—In this paragraph—

(i) the term “appropriate official” means—

(I) a commercial market representative;

(II) another individual designated by the senior official appointed by the Administrator with responsibilities under sections 8, 15, 31, and 36; or

(III) the Office of Small and Disadvantaged Business Utilization of a Federal agency, if the head of the Federal agency and the Administrator agree;

(ii) the term “defense item” has the meaning given that term in section 38(j)(4)(A) of the Arms Export Control Act (22 U.S.C. 2778(j)(4)(A));

(iii) the term “major non-NATO ally” means a country designated as a major non-NATO ally under section 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k);

(iv) the term “past performance” includes performance of a contract for a sale of defense items (under section 38 of the Arms Export Control Act (22 U.S.C. 2778)) to the government of a member nation of North Atlantic Treaty Organization, the government of a major non-NATO ally, or the government of a country with which the United States has a defense cooperation agreement (as certified by the Secretary of State); and

(v) the term “small business exporter” means a small business concern that exports defense items under section 38 of the Arms Export Control Act (22 U.S.C. 2778) to the government of a member nation of the North Atlantic Treaty Organization, the government of a major non-NATO ally, or the government of a country with which the United States has a defense cooperation agreement (as certified by the Secretary of State).

(e)(1) Except as provided in subsection (g)—

- (A) an executive agency intending to—
- (i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or
 - (ii) place an order, expected to exceed \$25,000, under a basic agreement, basis ordering agreement, or similar arrangement,
- shall publish a notice described in subsection (f);
- (B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—
- (i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and
 - (ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and
- (C) an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.
- (2)(A) A notice of solicitation required to be published under paragraph (1) may be published—
- (i) by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or
 - (ii) by the Secretary of Commerce in the Commerce Business Daily.
- (B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.
- (3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—
- (A) issue the solicitation earlier than 15 days after the date on which the notice is published; or
 - (B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—
 - (i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;
 - (ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or
 - (iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g)(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

- (i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or
 - (ii) a proposal submitted under section 9 of this Act;
- (D) the procurement is made against an order placed under a requirements contract;
- (E) the procurement is made for perishable subsistence supplies;
- (F) the procurement is for utility services, other than telecommunication services, and only one source is available; or
- (G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.
- (2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), and (7) of section 2304(c) of title 10, United States Code.
- (3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.
- (h)(1) An executive agency may not award a contract using procedures other than competitive procedures unless—
- (A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—
 - (i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the advocate for competition for the procuring activity (without further delegation);
 - (ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or
 - (iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and
 - (B) all other requirements applicable to the use of such procedures under title III of the Federal Property and Adminis-

trative Services Act of 1949 (41 U.S.C. 251 et sq.) or chapter 137 of title 10, United States Code, as appropriate, have been satisfied.

(2) The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10, United States Code, shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate.

(i) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) For purposes of this section, the term “executive agency” has the meaning provided such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES.—

(1) IN GENERAL.—Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

(2) CONTENT OF NOTICE.—The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

(B) the due date for receipt of offers.

(l) MANAGEMENT ASSISTANCE FOR SMALL BUSINESSES AFFECTED BY MILITARY OPERATIONS.—The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict (as defined in section 7(n)(1)).

(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CONTRACTING OFFICER.—The term “contracting officer” has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term “small business concern owned and controlled by women” has the meaning given

such term in section 3(n), except that ownership shall be determined without regard to any community property law.

(2) **AUTHORITY TO RESTRICT COMPETITION.**—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

(D) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(E) each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women.

(3) **WAIVER.**—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) **IDENTIFICATION OF INDUSTRIES.**—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) **ENFORCEMENT; PENALTIES.**—

(A) **VERIFICATION OF ELIGIBILITY.**—In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(E)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(E).

(B) **EXAMINATIONS.**—The procedures established under subparagraph (A) may provide for program examinations

(including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(E).

(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18, United States Code; and

(ii) sections 3729 through 3733 of title 31, United States Code.

(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(7) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(8) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry

that has received a waiver under paragraph (3) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(n) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protége programs or community-based, statewide, or local business development programs.

(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

* * * * *

SEC. 21. (a)(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 29, any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as "applicants") to assist in establishing small business development centers and to any such labor for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises, management and technical assistance regarding small business participation in international markets, export promotion and technology transfer; delivery or distribution of such services and information; providing access to business analysts who can refer small business concerns to available experts; and, to the extent practicable, providing assistance in furtherance of the Small Busi-

ness Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017: *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 29 as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 29 to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(2) COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

(A) INFORMATION AND SERVICES.—The small business development centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies (including State trade agencies), and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.

(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

(C) DEFINITION.—In this paragraph, the term "Export Assistance Center" has the same meaning as in section 22.

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration.

(A) Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing

the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C) Whereas On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National and a State basis.

(4) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

(A) IN GENERAL.—The Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(B) RESTRICTION.—The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

(C) FUNDING FORMULA.—

(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

(I) The annual amount made available under section 20(a) for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The de-

ductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

(iii) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

(I) If the amount made available is not less than \$81,500,000 and not more than \$90,000,000, the minimum funding level shall be \$500,000.

(II) If the amount made available is less than \$81,500,000, the minimum funding level shall be the remainder of \$500,000 minus a percentage of \$500,000 equal to the percentage amount by which the amount made available is less than \$81,500,000.

(III) If the amount made available is more than \$90,000,000, the minimum funding level shall be the sum of \$500,000 plus a percentage of \$500,000 equal to the percentage amount by which the amount made available exceeds \$90,000,000.

(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A).

(v) USE OF AMOUNTS.—

(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

(aa) not more than \$500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1); and

(bb) not more than \$500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).

(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than \$85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general small business development center program) or would further reduce the amount of such grants below such amount.

(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G), or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph—

(I) \$130,000,000 for fiscal year 2005; and

(II) \$135,000,000 for fiscal year 2006.

(viii) LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than \$1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed \$100,000, and shall be used for small business development center personnel expenses and related small business programs and services.

(ix) STATE DEFINED.—In this subparagraph, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(5) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

(B) CONTRACT PREREQUISITES.—Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this paragraph shall not be subject to the matching funds or eligibility requirements of paragraph (4).

(D) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 15(g).

(6) Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C) with outreach, development, and enhancement of minority-owned small business startups or expansions, HUBZone small business concerns, veteran-owned small business startups or expansions, and women-owned small business startups or expansions, in communities impacted by base closings or military or corporate downsizing, or in rural or underserved communities;

as provided under subparagraphs (B) through (G) of subsection (c)(3). Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a \$15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be \$100,000.

(7) PRIVACY REQUIREMENTS.—

(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

(i) restrict Administrator access to program activity data; or

(ii) prevent the Administrator from using client information to conduct client surveys.

(C) REGULATIONS.—

(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.

(8) CYBERSECURITY ASSISTANCE.—

(A) IN GENERAL.—The Department of Homeland Security, and any other Federal department or agency in coordination with the Department of Homeland Security, may leverage small business development centers to provide assistance to small business concerns by disseminating information relating to cybersecurity risks and other homeland security matters to help small business concerns in developing or enhancing cybersecurity infrastructure, awareness of cyber threat indicators, and cyber training programs for employees.

(B) DEFINITIONS.—In this paragraph, the terms “cybersecurity risk” and “cyber threat indicator” have the

meanings given such terms, respectively, under section 2209(a) of the Homeland Security Act of 2002.

(b)(1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) An applicant may apply to participate in the program by submitting to the Administration for approval a plan naming those authorized in subsection (a) to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and assurances the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a plan or combination of plans submitted. In all cases, the Administration shall review plans for conformity with the plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

(3) ASSISTANCE TO OUT-OF-STATE SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c), to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

(B) DISASTER RECOVERY ASSISTANCE.—

(i) IN GENERAL.—At the discretion of the Administrator, the Administrator may authorize a small business development center to provide advice, information, and assistance, as described in subsection (c), to a small business concern located outside of the State, without regard to geographic proximity to the small business development center, if the small business concern is located in an area for which the President has declared a major disaster.

(ii) TERM.—

(I) IN GENERAL.—A small business development center may provide advice, information, and assistance to a small business concern under clause (i) for a period of not more than 2 years after the date on which the President declared a major disaster for the area in which the small business concern is located.

(II) EXTENSION.—The Administrator may, at the discretion of the Administrator, extend the period described in subclause (I).

(iii) CONTINUITY OF SERVICES.—A small business development center that provides counselors to an area described in clause (i) shall, to the maximum extent practicable, ensure continuity of services in any State in which the small business development center otherwise provides services.

(iv) ACCESS TO DISASTER RECOVERY FACILITIES.—For purposes of this subparagraph, the Administrator shall, to the maximum extent practicable, permit the personnel of a small business development center to use any site or facility designated by the Administrator for use to provide disaster recovery assistance.

(c)(1) Applicants receiving grants under this section shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations. Applicants receiving grants under this section may also assist small businesses by providing, where appropriate, education on the requirements applicable to small businesses under the regulations issued under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and on compliance with those requirements.

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agent to provide state or art technology to small businesses through coupling with national and regional technology data sources;

(D) access to information specialists to assist in providing information searches and referrals to small business;

(E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises;

(F) access to laboratory and adaptive engineering facilities; and

(G) access to cybersecurity specialists to counsel, assist, and inform small business concern clients, in furtherance of the Small Business Development Center Cyber Strategy devel-

oped under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017.

(3) Services provided by a small business development center shall include, but shall not be limited to—

(A) furnishing one-to-one individual counseling to small businesses, including—

(i) working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including—

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the Administration may work in cooperation with the State to establish a State international trade center for these purposes;

(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

(E) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G) assisting small businesses to develop and implement strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

(i) by developing broad economic assessments of the adverse impacts of—

(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business plan.

(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associations in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small businesses strengths and weaknesses in the locality;

(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

(N) assisting rural small businesses—

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small business can be referred;

(Q) providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S) providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program;

(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006; and

(U) encouraging and assisting the provision of succession planning to small business concerns with a focus on transitioning to cooperatives, as defined in section 7(a)(35), and qualified employee trusts (collectively referred to in this subparagraph as “employee-owned business concerns”), including by—

(i) providing training to individuals to promote the successful management, governance, or operation of a business purchased by those individuals in the formation of an employee-owned business concern;

(ii) assisting employee-owned business concerns that meet applicable size standards established under section 3(a) with education and technical assistance with respect to financing and contracting programs administered by the Administration;

(iii) coordinating with lenders on conducting outreach on financing through programs administered by the Administration that may be used to support the transition of ownership to employees;

(iv) supporting small business concerns in exploring or assessing the possibility of transitioning to an employee-owned business concern; and

(v) coordinating with the cooperative development centers of the Department of Agriculture, the land grant extension network, the Manufacturing Extension Partnership, community development financial institutions, employee ownership associations and service providers, and local, regional and national cooperative associations.

(U) in conjunction with the United States Patent and Trademark Office, providing training—

(i) to small business concerns relating to—

(I) domestic and international intellectual property protections; and

(II) how the protections described in subclause (I) should be considered in the business plans and growth strategies of the small business concerns; and

(ii) that may be delivered—

(I) in person; or

(II) through a website.

(4) A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(5) In addition to the methods prescribed in section 21(c)(2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but

not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

(6) In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a), or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) to such center or the date the Administration notifies the grantee funded under subsection (a)(1) that funds are available for grant applications pursuant to subsection (a)(6), whichever date occurs last, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a). Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a). Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a).

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall—

(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

(9) *SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—A small business development center may not decline to provide services to an otherwise eligible small business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.*

(d) Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and

any other appropriate measures directed at improving the export performance of small businesses within the State.

(e) Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services.

(f) The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

(h) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) APPOINTMENT AND COMPENSATION.—The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve 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 a rate not less than the rate of GS-17 of the General Schedule.

(2) DUTIES.—

(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) CONSULTATION REQUIREMENTS.—In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the

program and shall not be subject to the approval or concurrence of such Administration officials.

(i)(1) There is established a National Small Business Development Center Advisory Board (herein referred to as "Board") which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem equivalent of the highest rate of pay for individuals occupying the position under GS-18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(j)(1) Each small business development center shall establish an advisory board.

(2) Each small business development center advisory board shall elect a chairman and advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

(k) PROGRAM EXAMINATION AND ACCREDITATION.—

(1) EXAMINATION.—Not later than 180 days after the date of enactment of this subsection, the Administration shall develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

(2) ACCREDITATION.—The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) for the purpose of developing a small business development center accreditation program.

(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

(B) ACCREDITATION REQUIREMENT.—After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such accreditation requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain accreditation.

(l) CONTRACT AUTHORITY.—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5, United States Code. If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.

(m) PROHIBITION ON CERTAIN FEES.—A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

(n) VETERANS ASSISTANCE AND SERVICES PROGRAM.—

(1) IN GENERAL.—A small business development center may apply for a grant under this subsection to carry out a veterans assistance and services program.

(2) ELEMENTS OF PROGRAM.—Under a program carried out with a grant under this subsection, a small business development center shall—

(A) create a marketing campaign to promote awareness and education of the services of the center that are available to veterans, and to target the campaign toward veterans, service-disabled veterans, military units, Federal agencies, and veterans organizations;

(B) use technology-assisted online counseling and distance learning technology to overcome the impediments to entrepreneurship faced by veterans and members of the Armed Forces; and

(C) increase coordination among organizations that assist veterans, including by establishing virtual integration of service providers and offerings for a one-stop point of contact for veterans who are entrepreneurs or owners of small business concerns.

(3) AMOUNT OF GRANTS.—A grant under this subsection shall be for not less than \$75,000 and not more than \$250,000.

(4) FUNDING.—Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter into cooperative agreements to carry out the provisions of this subsection.

* * * * *

SEC. 29. WOMEN'S BUSINESS CENTER PROGRAM.

(a) DEFINITIONS.—In this section—

(1) the term “Assistant Administrator” means the Assistant Administrator of the Office of Women’s Business Ownership established under subsection (g);

(2) the term “private nonprofit organization” means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(3) the term “small business concern owned and controlled by women”, either startup or existing, includes any small business concern—

(A) that is not less than 51 percent owned by 1 or more women; and

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term “women’s business center site” means the location of—

(A) a women’s business center; or

(B) 1 or more women’s business centers, established in conjunction with another women’s business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women’s business center or centers in conjunction with which it was established.

(b) AUTHORITY.—The Administration may provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(c) CONDITIONS OF PARTICIPATION.—

(1) NON-FEDERAL CONTRIBUTIONS.—As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and

(B) in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

(2) FORM OF NON-FEDERAL CONTRIBUTIONS.—Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) FORM OF FEDERAL CONTRIBUTIONS.—The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained.

(4) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(d) CONTRACT AUTHORITY.—A women's business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

(e) SUBMISSION OF 5-YEAR PLAN.—Each applicant organization initially shall submit a 5-year plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

(f) CRITERIA.—The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women's business center site proposed by the applicant.

(g) OFFICE OF WOMEN'S BUSINESS OWNERSHIP.—

(1) ESTABLISHMENT.—There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 408 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note)). The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

(2) ASSISTANT ADMINISTRATOR OF THE OFFICE OF WOMEN'S BUSINESS OWNERSHIP.—

(A) QUALIFICATION.—The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, United States Code. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(B) RESPONSIBILITIES AND DUTIES.—

(i) RESPONSIBILITIES.—The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women's Business Ownership established to assist women entrepreneurs in the areas of—

(I) starting and operating a small business;

(II) development of management and technical skills;

(III) seeking Federal procurement opportunities; and

(IV) increasing the opportunity for access to capital.

(ii) DUTIES.—The Assistant Administrator shall—

(I) administer and manage the Women's Business Center program;

(II) recommend the annual administrative and program budgets for the Office of Women's Business Ownership (including the budget for the Women's Business Center program);

(III) establish appropriate funding levels therefore;

(IV) review the annual budgets submitted by each applicant for the Women's Business Center program;

(V) select applicants to participate in the program under this section;

(VI) implement this section;

(VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;

(VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

(IX) serve as liaison for the National Women's Business Council; and

(X) advise the Administrator on appointments to the Women's Business Council.

(C) CONSULTATION REQUIREMENTS.—In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

(h) PROGRAM EXAMINATION.—

(1) IN GENERAL.—The Administration shall—

(A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) and, with respect to any in-kind contributions described in subsection (c)(2) that were used to satisfy the requirements of subsection (c), verification of the existence and valuation of those contributions; and

(B) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(2) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to award a contract (as a sustainability grant) under subsection (l) or to renew a contract (either as a grant or cooperative agreement) under this section with a women's business center, the Administration—

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection

(j), or the information provided by the center is inadequate.

(i) **CONTRACT AUTHORITY.**—The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5, United States Code.

(j) **MANAGEMENT REPORT.**—

(1) **IN GENERAL.**—The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

(2) **CONTENTS.**—Each report submitted under paragraph (1) shall include information concerning, with respect to each women's business center established pursuant to this section—

- (A) the number of individuals receiving assistance;
- (B) the number of startup business concerns formed;
- (C) the gross receipts of assisted concerns;
- (D) the employment increases or decreases of assisted concerns;

(E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and

(F) the most recent analysis, as required under subsection (h)(1)(B), and the subsequent determination made by the Administration under that subsection.

(k) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (l)—

- (A) \$12,000,000 for fiscal year 2000;
- (B) \$12,800,000 for fiscal year 2001;
- (C) \$13,700,000 for fiscal year 2002; and
- (D) \$14,500,000 for fiscal year 2003.

(2) **USE OF AMOUNTS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), amounts made available under this subsection for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

(B) **EXCEPTIONS.**—Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

- (i) For fiscal year 2000, 2 percent.

- (ii) For fiscal year 2001, 1.9 percent.
- (iii) For fiscal year 2002, 1.9 percent.
- (iv) For fiscal year 2003, 1.6 percent.

(3) EXPEDITED ACQUISITION.—Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

(4) RESERVATION OF FUNDS FOR SUSTAINABILITY PILOT PROGRAM.—

(A) IN GENERAL.—Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (1):

- (i) For fiscal year 2000, 17 percent.
- (ii) For fiscal year 2001, 18.8 percent.
- (iii) For fiscal year 2002, 30.2 percent.
- (iv) For fiscal year 2003, 30.2 percent.

(B) USE OF UNAWARDED FUNDS FOR SUSTAINABILITY PILOT PROGRAM GRANTS.—If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (1)(1)(B), the Administration is authorized to use the unawarded amount to fund additional women's business center sites or to increase funding of existing women's business center sites under subsection (b).

(m) CONTINUED FUNDING FOR CENTERS.—

(1) IN GENERAL.—A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

(2) APPLICABILITY.—A nonprofit organization described in this paragraph is a nonprofit organization that has received funding under subsection (b) or (1).

(3) APPLICATION AND APPROVAL CRITERIA.—

(A) CRITERIA.—Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

(B) CONTENTS.—Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (1), as in effect on the date of enactment of this Act.

(C) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each such application.

(4) AWARD OF GRANTS.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the

Federal share of the cost of activities described in the application to each applicant approved under this subsection.

(B) AMOUNT.—A grant under this subsection shall be for not more than \$150,000, for each year of that grant.

(C) FEDERAL SHARE.—The Federal share under this subsection shall be not more than 50 percent.

(D) PRIORITY.—In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or subsection (l) priority over first-time applications under subsection (b).

(5) RENEWAL.—

(A) IN GENERAL.—The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

(B) UNLIMITED RENEWALS.—There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

(n) PRIVACY REQUIREMENTS.—

(1) IN GENERAL.—A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

(2) ADMINISTRATION USE OF INFORMATION.—This subsection shall not—

(A) restrict Administration access to program activity data; or

(B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

(3) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).

(o) STUDY AND REPORT ON REPRESENTATION OF WOMEN.—

(1) STUDY.—The Administrator shall periodically conduct a study to identify industries, as defined under the North American Industry Classification System, underrepresented by small business concerns owned and controlled by women.

(2) REPORT.—Not later than 3 years after the date of enactment of this subsection, and every 5 years thereafter, the Administrator shall submit 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 results of each study under paragraph (1) conducted during the 5-year period ending on the date of the report.

(p) SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.—A women’s business center may not decline to provide services to an otherwise eligible small business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.

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SEC. 32. VETERANS PROGRAMS.

(a) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator for Veterans Business Development (in this section referred to as the “Associate Administrator”) appointed under section 4(b)(1).

(b) ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOPMENT.—The Associate Administrator—

(1) shall be an appointee in the Senior Executive Service;

(2) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. The Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and

(3) shall report to and be responsible directly to the Administrator.

(c) INTERAGENCY TASK FORCE.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this subsection, the President shall establish an interagency task force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of the pre-established Federal contracting goals for, small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans (in this section referred to as the “task force”).

(2) MEMBERSHIP.—The members of the task force shall include—

(A) the Administrator, who shall serve as chairperson of the task force; and

(B) a senior level representative from—

(i) the Department of Veterans Affairs;

(ii) the Department of Defense;

(iii) the Administration (in addition to the Administrator);

(iv) the Department of Labor;

(v) the Department of the Treasury;

(vi) the General Services Administration;

(vii) the Office of Management and Budget; and

(viii) 4 representatives from a veterans service organization or military organization or association, selected by the President.

(3) DUTIES.—The task force shall—

(A) consult regularly with veterans service organizations and military organizations in performing the duties of the task force; and

(B) coordinate administrative and regulatory activities and develop proposals relating to—

(i) improving capital access and capacity of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by service-disabled veterans or a small business concern owned and controlled by veterans;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government.

(d) PARTICIPATION IN TAP WORKSHOPS.—

(1) IN GENERAL.—The Associate Administrator shall increase veteran outreach by ensuring that Veteran Business Outreach Centers regularly participate, on a nationwide basis, in the workshops of the Transition Assistance Program of the Department of Labor.

(2) PRESENTATIONS.—In carrying out paragraph (1), a Veteran Business Outreach Center may provide grants to entities located in Transition Assistance Program locations to make presentations on the opportunities available from the Administration for recently separating or separated veterans. Each presentation under this paragraph shall include, at a minimum, a description of the entrepreneurial and business training resources available from the Administration.

(3) WRITTEN MATERIALS.—The Associate Administrator shall—

(A) create written materials that provide comprehensive information on self-employment and veterans entre-

- preneurship, including information on resources available from the Administration on such topics; and
- (B) make the materials created under subparagraph (A) available to the Secretary of Labor for inclusion in the Transition Assistance Program manual.
- (4) **REPORTS.**—The Associate Administrator shall submit to Congress progress reports on the implementation of this subsection.
- (e) **WOMEN VETERANS BUSINESS TRAINING.**—The Associate Administrator shall—
- (1) compile information on existing resources available to women veterans for business training, including resources for—
- (A) vocational and technical education;
- (B) general business skills, such as marketing and accounting; and
- (C) business assistance programs targeted to women veterans; and
- (2) disseminate the information compiled under paragraph (1) through Veteran Business Outreach Centers and women’s business centers.
- (f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section—
- (1) \$1,500,000 for fiscal year 2005; and
- (2) \$2,000,000 for fiscal year 2006.
- (g) **ACCESS TO SURPLUS PROPERTY FOR VETERAN-OWNED SMALL BUSINESSES.**—
- (1) **DEFINITIONS.**—In this subsection—
- (A) the term “foreign excess property” has the meaning given the term in section 102 of title 40, United States Code; and
- (B) the term “state agency” has the meaning given the term, including the roles and responsibilities assigned, in section 549 of title 40, United States Code.
- (2) **REQUIREMENT.**—The Administrator, in coordination with the Administrator of General Services, shall provide access to and manage the distribution of surplus property, and foreign excess property returned to a State for handling as surplus property, owned by the United States under chapter 7 of title 40, United States Code, to small business concerns owned and controlled by veterans (as verified by the Secretary of Veterans Affairs under section 8127 of title 38, United States Code) pursuant to a memorandum of agreement between the Administrator, the Administrator of General Services, and the head of the applicable state agency for surplus properties and in accordance with section 549 of title 40, United States Code.
- (h) **SERVICES FOR CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.**—*A Veteran Business Outreach Center may not decline to provide services to an otherwise eligible small*

business concern under this section solely because such concern is a cannabis-related legitimate business or service provider.

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SMALL BUSINESS INVESTMENT ACT OF 1958

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TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

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SEC. 511. LOANS TO CANNABIS-RELATED LEGITIMATE BUSINESSES AND SERVICE PROVIDERS.

The Administrator may not decline to provide a guarantee for a loan under this title to an otherwise eligible State or local development company solely because such State or local development company provides financing to an entity that is a cannabis-related legitimate business or service provider (as defined in section 3(ff) of the Small Business Act).

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IMMIGRATION AND NATIONALITY ACT

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) The term “administrator” means the official designated by the Secretary of State pursuant to section 104(b) of this Act.

(2) The term “advocates” includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term “alien” means any person not a citizen or national of the United States.

(4) The term “application for admission” has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term “Attorney General” means the Attorney General of the United States.

(6) The term “border crossing identification card” means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A)

each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term “clerk of court” means a clerk of a naturalization court.

(8) The terms “Commissioner” and “Deputy Commissioner” mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term “consular officer” means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III, for the purpose of adjudicating nationality.

(10) The term “crewman” means a person serving in any capacity on board a vessel or aircraft.

(11) The term “diplomatic visa” means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term “doctrine” includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 212(d)(5) or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,
- (v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a), or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term “foreign state” includes outlying possessions of a foreign state, but self-governing dominions and territories under

mandate or trusteeship shall be regarded as separate foreign states.

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien’s immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or

trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1);

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i) (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such

alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 214, an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 214(c)(2), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of

pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or (ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who—

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

- (iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;
- (P) an alien having a foreign residence which the alien has no intention of abandoning who—
- (i)(a) is described in section 214(c)(4)(A) (relating to athletes), or (b) is described in section 214(c)(4)(B) (relating to entertainment groups);
- (ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers;
- (iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or non-commercial program that is culturally unique; or
- (iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;
- (Q)(i) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or (ii)(I) an alien citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 24 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Secretary of Homeland Security under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 214(k), an alien—

(i) who the Attorney General determines—

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investiga-

tive or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and

military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 214(q), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

(i) such petition has been pending for 3 years or more;

or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform

the functions of an immigration officer specified by this Act or any section thereof.

(19) The term “ineligible to citizenship,” when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term “national” means a person owing permanent allegiance to a state.

(22) The term “national of the United States” means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term “naturalization” means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(25) The term “noncombatant service” shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term “nonimmigrant visa” means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term “special immigrant” means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant’s spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3 (a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Im-

migration and Nationality Technical Corrections Act of 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years, and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 (M) subject to the numerical limitations of section 203(b)(4), an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term “State” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term “totalitarian party” means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms “totalitarian dictatorship” and “totalitarianism” mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term “United States”, except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term “unmarried”, when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term “world communism” means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term “graduates of a medical school” means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program,

shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term “aggravated felony” means—

- (A) murder, rape, or sexual abuse of a minor;
- (B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);
- (C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);
- (D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (E) an offense described in—
 - (i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
 - (ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or
 - (iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);
- (F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least one year;
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) at least one year;
- (H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);
- (I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);
- (J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (K) an offense that—
 - (i) relates to the owning, controlling, managing, or supervising of a prostitution business;
 - (ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

- (iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
- (L) an offense described in—
- (i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;
- (ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or
- (iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);
- (M) an offense that—
- (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
- (ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- (N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act
- (O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;
- (Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;
- (R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
- (S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
- (T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge

of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade

or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

(47)(A) The term “order of deportation” means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term “stowaway” means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term “intended spouse” means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III).

(51) The term “VAWA self-petitioner” means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 204(a)(1)(A);

(B) clause (ii) or (iii) of section 204(a)(1)(B);

(C) section 216(c)(4)(C);

(D) the first section of Public Law 89–732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

(52) The term “accredited language training program” means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in titles I and II—

(1) The term “child” means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child’s proposed residence: *Provided*, That the Attorney General is satisfied that proper care will be fur-

nished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b).

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, *Provided*, That—

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted—

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

- (bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and
- (ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (iii) subject to the same provisos as in clauses (i) and (ii), a child who—
- (I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
- (II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
- (III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b).
- (2) The term “parent”, “father”, or “mother” means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term “parent” does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.
- (3) The term “person” means an individual or an organization.
- (4) The term “immigration judge” means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.
- (5) The term “adjacent islands” includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.
- (c) As used in title III—
- (1) The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years

(except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms “parent”, “father”, and “mother” include in the case of a posthumous child a deceased parent, father, and mother.

(e) For the purpose of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section [(except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana)]; if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture

or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 212(a)(2)(E), the term “serious criminal offense” means—

- (1) any felony;
- (2) any crime of violence, as defined in section 16 of title 18 of the United States Code; or
- (3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien’s options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

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TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * *

SPECIAL AGRICULTURAL WORKERS

SEC. 210. (a) LAWFUL RESIDENCE.—

(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

(B) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES AND RESIDENCE IN THE UNITED STATES.—The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the

United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(2) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) GROUP 1.—Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-months periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) GROUP 2.—In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) NUMERICAL LIMITATION.—Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000

aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) TERMINATION OF TEMPORARY RESIDENCE.—(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(6)(C)(i), or

(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an “employment authorized” endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien oth-

erwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—
For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89–732, or Public Law 95–145.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to

such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6) of this subsection.

(6) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B), or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) REQUIRED DISCLOSURES.—The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) CRIME.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

- (7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—
- (A) CRIMINAL PENALTY.—Whoever—
- (i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or
- (ii) creates or supplies a false writing or document for use in making such an application,
- shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.
- (B) EXCLUSION.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).
- (c) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—
- (1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.
- (2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsection (a)(1)(C)—
- (A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5) and (7)(A) of section 212(a) shall not apply.
- (B) WAIVER OF OTHER GROUNDS.—
- (i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.
- (ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):
- (I) Paragraph (2)(A) and (2)(B) (relating to criminals).
- (II) Paragraph (4) (relating to aliens likely to become public charges).
- (III) Paragraph (2)(C) (relating to drug offenses) [, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana].
- (IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof.
- (C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4) if the alien demonstrates a history of em-

ployment in the United States evidencing self-support without reliance on public cash assistance.

(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an “employment authorized” endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a non-frivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an “employment authorized” endorsement or other appropriate work permit.

(3) No application fees collected by the Service pursuant to this subsection may be used by the Service to offset the costs of the special agricultural worker legalization program until the Service implements the program consistent with the statutory mandate as follows:

(A) During the application period described in subsection (a)(1)(A) the Service may grant temporary admission to the United States, work authorization, and provide an “employment authorized” endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this Act.

(B) During the application period described in subsection (a)(1)(A) any alien who has filed an application for adjustment of status within the United States as provided in subsection (b)(1)(A) pursuant to the provision of 8 CFR section 210.1(j) is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the per-

formance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106 (as in effect before October 1, 1996).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for assistance under a State program funded under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsections (a)(5) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully ad-

mitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term “seasonal agricultural services” means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissibility.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.—Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 101(b)(1); and

(iii) is seeking an immigrant visa as an immediate relative under section 201(b),

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed im-

prisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.

(H) SIGNIFICANT TRAFFICKERS IN PERSONS.—

(i) IN GENERAL.—Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

(ii) BENEFICIARIES OF TRAFFICKING.—Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) MONEY LAUNDERING.—Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;
is inadmissible.

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization

that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) EXCEPTION.—Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “engage in terrorist activity”

means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED.—As used in this section, the term “terrorist organization” means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) EXCEPTION FOR OFFICIALS.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) EXCEPTION FOR OTHER ALIENS.—An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien’s admission would compromise a compelling United States foreign policy interest.

(iv) NOTIFICATION OF DETERMINATIONS.—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judici-

ary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.—

(i) IN GENERAL.—Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and (II) the alien is not a threat to the security of the United States.

(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—

(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23,

1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) PARTICIPATION IN GENOCIDE.—Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible

(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) ASSOCIATION WITH TERRORIST ORGANIZATIONS.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible.

(4) PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

- (II) health;
- (III) family status;
- (IV) assets, resources, and financial status; and
- (V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

(II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(E) SPECIAL RULE FOR QUALIFIED ALIEN VICTIMS.—Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, non-immigrant status under section 101(a)(15)(U); or

(iii) is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)).

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the

case of an alien described in clause (ii) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—

For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) PROFESSIONAL ATHLETES.—

(I) IN GENERAL.—A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) DEFINITION.—For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) LONG DELAYED ADJUSTMENT APPLICANTS.—A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of

the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.— Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) APPLICATION OF GROUNDS.—The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) **IN GENERAL.**—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) **EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.**—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) **FAILURE TO ATTEND REMOVAL PROCEEDING.**—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) **MISREPRESENTATION.**—

(i) **IN GENERAL.**—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) **FALSELY CLAIMING CITIZENSHIP.**—

(I) **IN GENERAL.**—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) **EXCEPTION.**—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the

United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

(D) STOWAWAYS.—Any alien who is a stowaway is inadmissible.

(E) SMUGGLERS.—

(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(11).

(F) SUBJECT OF CIVIL PENALTY.—

(i) IN GENERAL.—An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(12).

(G) STUDENT VISA ABUSERS.—An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) DOCUMENTATION REQUIREMENTS.—

(A) IMMIGRANTS.—

(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such

document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

(B) NONIMMIGRANTS.—

(i) IN GENERAL.—Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).

(iv) VISA WAIVER PROGRAM.—For authority to waive the requirement of clause (i) under a program, see section 217.

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.—Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) ALIENS UNLAWFULLY PRESENT.—

(i) IN GENERAL.—Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) EXCEPTIONS.—

(I) MINORS.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if “violation of the terms of the alien’s nonimmigrant visa” were substituted for “unlawful entry into the United States” in subclause (III) of that paragraph.

(V) VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS.—Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) was at least one central reason for the alien’s unlawful presence in the United States.

(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) WAIVER.—The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) IN GENERAL.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's re-applying for admission.

(iii) WAIVER.—The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) GUARDIAN REQUIRED TO ACCOMPANY HELPLESS ALIEN.—Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

(C) INTERNATIONAL CHILD ABDUCTION.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS.—Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other

than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) EXCEPTIONS.—Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) UNLAWFUL VOTERS.—

(i) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) NOTICES OF DENIALS.—

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

(d)(1) The Attorney General shall determine whether a ground for inadmissible exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and know-

ingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c).

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be

dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) of this Act.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a), if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a non-immigrant described in section 101(a)(15)(T), except that the

ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of—

- (i) subsection (a)(1); and
- (ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(U). The Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(U), if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the

case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): *And provided further*, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

- (C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or
- (3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.
- (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) [and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana] if—
- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—
- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or
- (C) the alien is a VAWA self-petitioner; and
- (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or re-applying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j)(1) The additional requirements referred to in section 101(a)(15)(J) for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English, (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to

the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).

(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of

Education (regardless of whether such school of medicine is in the United States).

(3) The Director of the United States Information Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program.

(k) Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

(l) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER PROGRAM.—

(1) IN GENERAL.—The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) ALIEN WAIVER OF RIGHTS.—An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this Act an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or

(B) to contest, other than on the basis of an application for withholding of removal under section 241(b)(3) of this Act or under the Convention Against Torture, or an application for asylum if permitted under section 208, any action for removal of the alien.

(3) REGULATIONS.—All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after the

date of enactment of the Consolidated Natural Resources Act of 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5, United States Code. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for non-immigrant visitors.

(4) FACTORS.—In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(5) SUSPENSION.—The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary's discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) ADDITION OF COUNTRIES.—The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver pro-

vided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.

(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(c), with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has

been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii) The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii) The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c)—

(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II) transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A)—

(i) shall expire on the date that is the later of—

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii) shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for non-immigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per nurse per violation, with the total penalty not to exceed \$10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding \$250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this subsection and section 101(a)(15)(H)(i)(c), the term "facility" means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, is not less than 28 percent of the total number of such hospital's acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term "lay off", with respect to a worker—

(A) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee's or an employer's rights under a collective bargaining agreement or other employment contract.

(n)(1) No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application, and

(ii) will provide working conditions for such a non-immigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H-1B nonimmigrants sought in the application are exempt H-1B nonimmigrants.

(F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H-1B-dependent employer) where—

(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that

required to be offered to H-1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H-1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(2)(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an oppor-

tunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discrimi-

nate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H-1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an H-1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 214(c)(1), for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a full-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a part-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive

status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III) In the case of an H-1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV) This clause does not apply to a failure to pay wages to an H-1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H-1B nonimmigrant an established salary practice of the employer, under which the employer pays to H-1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H-1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H-1B-dependent employer places a nonexempt H-1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United

States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H-1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer,

and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act of any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Sec-

retary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(3)(A) For purposes of this subsection, the term “H–1B-dependent employer” means an employer that—

(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H–1B nonimmigrants;

(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or

(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—

(i) the term “exempt H–1B nonimmigrant” means an H–1B nonimmigrant who—

(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or

(II) has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term nonexempt H-1B nonimmigrant means an H-1B nonimmigrant who is not an exempt H-1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H-1B nonimmigrants, exempt H-1B nonimmigrants shall not be taken into account during the longer of—

(I) the 6-month period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998; or

(II) the period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(4) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an application with respect to one or more H-1B nonimmigrants by an employer, the employer is considered to “displace” a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C) The term “H-1B nonimmigrant” means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

(D)(i) The term “lays off”, with respect to a worker—

(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another

employer under paragraph (1)(F), with either employer described in such paragraph) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(E) The term "United States worker" means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer's failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner's misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a résumé or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings

shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9, United States Code.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5, United States Code. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation or \$5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 204 or 214(c)—

(I) during a period of not more than 1 year; or

(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(o) An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) in the case of an employee of—

(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r) Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—

(A) in which the language of instruction was English;

(B) located in a country—

(i) designated by such commission not later than 30 days after the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or

(ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection; and

(C)(i) which was in operation on or before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999; or

(ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection.

(s) In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

(t)(1) No alien may be admitted or provided status as a non-immigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

- (II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the attestation; and
- (ii) will provide working conditions for such a non-immigrant that will not adversely affect the working conditions of workers similarly employed.
- (B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.
- (C) The employer, at the time of filing the attestation—
- (i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought; or
- (ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) are sought.
- (D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.
- (2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer's principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).
- (B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.
- (ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.
- (C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) within 7 days of the date of the filing of the attestation.
- (3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresenta-

tion unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in

violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(IV) This clause does not apply to a failure to pay wages to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to vio-

late any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii), during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(4) For purposes of this subsection:

(A) The term "area of employment" means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) by an employer, the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experi-

ence, and is located in the same area of employment as the other job.

(C)(i) The term “lays off”, with respect to a worker—

(I) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(D) The term “United States worker” means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207 of this title, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

(t)(1) Except as provided in paragraph (2), no person admitted under section 101(a)(15)(Q)(ii)(I), or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this Act until it is established that such person has resided and been physically present in the person’s country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

(A) departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

(B) the admission of the alien is in the public interest or the national interest of the United States.

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CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the

alien is within one or more of the following classes of deportable aliens:

(1) INADMISSIBLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

(A) INADMISSIBLE ALIENS.—Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) PRESENT IN VIOLATION OF LAW.—Any alien who is present in the United States in violation of this Act or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), is deportable.

(C) VIOLATED NONIMMIGRANT STATUS OR CONDITION OF ENTRY.—

(i) NONIMMIGRANT STATUS VIOLATORS.—Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status, is deportable.

(ii) VIOLATORS OF CONDITIONS OF ENTRY.—Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 212(g) is deportable.

(D) TERMINATION OF CONDITIONAL PERMANENT RESIDENCE.—

(i) IN GENERAL.—Any alien with permanent resident status on a conditional basis under section 216 (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) EXCEPTION.—Clause (i) shall not apply in the cases described in section 216(c)(4) (relating to certain hardship waivers).

(E) SMUGGLING.—

(i) IN GENERAL.—Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or

under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) **WAIVER AUTHORIZED.**—The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F)

(G) **MARRIAGE FRAUD.**—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) **WAIVER AUTHORIZED FOR CERTAIN MISREPRESENTATIONS.**—The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except

for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 212(a) which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j)) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.

(ii) MULTIPLE CRIMINAL CONVICTIONS.—Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) HIGH SPEED FLIGHT.—Any alien who is convicted of a violation of section 758 of title 18, United States Code (relating to high speed flight from an immigration checkpoint), is deportable.

(v) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien who is convicted under section 2250 of title 18, United States Code, is deportable.

(vi) WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) CONTROLLED SUBSTANCES.—

(i) CONVICTION.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), [other than a single offense involving possession for one's own use of 30 grams or less of marijuana], is deportable.

(ii) DRUG ABUSERS AND ADDICTS.—Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) CERTAIN FIREARM OFFENSES.—Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable.

(D) MISCELLANEOUS CRIMES.—Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 215 or 278 of this Act, is deportable.

(E) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDER, CRIMES AGAINST CHILDREN AND.—

(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time after admission is enjoined under a

protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(F) **TRAFFICKING.**—Any alien described in section 212(a)(2)(H) is deportable.

(3) **FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.**—

(A) **CHANGE OF ADDRESS.**—An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) **FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.**—Any alien who at any time has been convicted—

(i) under section 266(c) of this Act or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) **DOCUMENT FRAUD.**—

(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is deportable.

(ii) **WAIVER AUTHORIZED.**—The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 274C and the offense was incurred solely to assist, aid, or support the alien’s spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) **FALSELY CLAIMING CITIZENSHIP.**—

(i) **IN GENERAL.**—Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable.

(ii) EXCEPTION.—In the case of an alien making a representation described in clause (i), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such representation.

(4) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who has engaged, is engaged, or at any time after admission engages in—

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) TERRORIST ACTIVITIES.—Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) EXCEPTIONS.—The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 212(a)(3)(C)(i).

(D) PARTICIPATED IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—Any alien described in clause (i), (ii), or (iii) of section 212(a)(3)(E) is deportable.

(E) PARTICIPATED IN THE COMMISSION OF SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien described in section 212(a)(2)(G) is deportable.

(F) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is deportable.

(5) PUBLIC CHARGE.—Any alien who, within five years after the date of entry, has become a public charge from causes

not affirmatively shown to have arisen since entry is deportable.

(6) UNLAWFUL VOTERS.—

(A) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.

(B) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such violation.

(7) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—

(A) IN GENERAL.—The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

(i) upon a determination that—

(I) the alien was acting in self-defense;

(II) the alien was found to have violated a protection order intended to protect the alien; or

(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime—

(aa) that did not result in serious bodily injury; and

(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

(B) CREDIBLE EVIDENCE CONSIDERED.—In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(b) An alien, admitted as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or 101(a)(15)(G)(i), and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a).

(c) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of sec-

tion 212(a) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status.

(d)(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15) filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 241(c)(2) until—

(A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or

(B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.

(2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws of the United States.

(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.

(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.

* * * * *

TEMPORARY PROTECTED STATUS

SEC. 244. (a) GRANTING OF STATUS.—

(1) IN GENERAL.—In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

(2) DURATION OF WORK AUTHORIZATION.—Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) NOTICE.—

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this title, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) TEMPORARY TREATMENT FOR ELIGIBLE ALIENS.—

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) CLARIFICATION.—Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this Act. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this Act.

(b) DESIGNATIONS.—

(1) IN GENERAL.—The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) EFFECTIVE PERIOD OF DESIGNATION FOR FOREIGN STATES.—The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) PERIODIC REVIEW, TERMINATIONS, AND EXTENSIONS OF DESIGNATIONS.—

(A) PERIODIC REVIEW.—At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) TERMINATION OF DESIGNATION.—If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1),

the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) EXTENSION OF DESIGNATION.—If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) INFORMATION CONCERNING PROTECTED STATUS AT TIME OF DESIGNATIONS.—At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) REVIEW.—

(A) DESIGNATIONS.—There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) APPLICATION TO INDIVIDUALS.—The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—

(1) IN GENERAL.—

(A) NATIONALS OF DESIGNATED FOREIGN STATES.—Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the

temporary protected status under this section during a registration period of not less than 180 days.

(B) **REGISTRATION FEE.**—The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an “employment authorized” endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed \$50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, United States Code, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) **ELIGIBILITY STANDARDS.**—

(A) **WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.**—In the determination of an alien’s admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) the provisions of paragraphs (5) and (7)(A) of section 212(a) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), [except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana], or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) **ALIENS INELIGIBLE.**—An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 208(b)(2)(A).

(3) **WITHDRAWAL OF TEMPORARY PROTECTED STATUS.**—The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date

the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) TREATMENT OF BRIEF, CASUAL, AND INNOCENT DEPARTURES AND CERTAIN OTHER ABSENCES.—

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) CONFIDENTIALITY OF INFORMATION.—The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) DOCUMENTATION.—

(1) INITIAL ISSUANCE.—Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) PERIOD OF VALIDITY.—Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) EFFECTIVE DATE OF TERMINATIONS.—If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) DETENTION OF THE ALIEN.—An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) RELATION OF PERIOD OF TEMPORARY PROTECTED STATUS TO CANCELLATION OF REMOVAL.—With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 240A(a), unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) BENEFITS AND STATUS DURING PERIOD OF TEMPORARY PROTECTED STATUS.—During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36)) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 245 and change of status under section 248, the alien shall be considered as being in, and maintaining, lawful status as a non-immigrant.

(g) EXCLUSIVE REMEDY.—Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) LIMITATION ON CONSIDERATION IN THE SENATE OF LEGISLATION ADJUSTING STATUS.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) SUPERMAJORITY REQUIRED.—Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) RULES.—Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters de-

scribed in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) ANNUAL REPORT AND REVIEW.—

(1) ANNUAL REPORT.—Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

(2) COMMITTEE REPORT.—No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 202 and 203 within the class to which the alien is chargeable for the fiscal year then current.

(c) Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S), (6) an alien who is deportable under section 237(a)(4)(B); (7) any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.

(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

(e)(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or subsection (d) or (p) of section 214 with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216A.

(g) In applying this section to a special immigrant described in section 101(a)(27)(K), such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

(h) In applying this section to a special immigrant described in section 101(a)(27)(J)—

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 212(a) shall not apply; and

(B) the Attorney General may waive other paragraphs of section 212(a) (other than paragraphs (2)(A), (2)(B), (2)(C) [(except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana)], (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 101(a)(27)(J) shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i)(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d)) of—

(i) a petition for classification under section 204 that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling \$1,000 as of the date of receipt of the application, but such sum shall not be

required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3)(A) The portion of each application fee (not to exceed \$200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 286.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under section 286(r), except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 286(m).

(j)(1) If, in the opinion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(i) has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully

admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

(2) If, in the sole discretion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(ii) has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to—

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956, the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

(3) Upon the approval of adjustment of status under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current.

(k) An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in section 101(a)(27)(C), under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

(l)(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate a nonimmigrant admitted into the United States under section 101(a)(15)(T)(i)—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 101(a)(15)(T)(i), or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the

investigation or prosecution is complete, whichever period of time is less;

(B) subject to paragraph (6), has, throughout such period, been a person of good moral character; and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or

(iii) was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 101(a)(15)(T).

the Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General, may adjust the status of the alien (and any person admitted under section 101(a)(15)(T)(ii) as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of—

(A) paragraphs (1) and (4) of section 212(a); and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10)(E)), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, unless—

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(6) For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification

was caused by, or incident to, the trafficking described in section 101(a)(15)(T)(i)(I).

(7) The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997).

(m)(1) Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if—

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii) if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or

local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) TIMELY APPLICATION.—

(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242 (as in effect before October 1, 1996), must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the

United States since the date of the enactment of this section.

(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the 2-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) CONTINUOUS RESIDENCE.—

(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

- (C) **ADMISSIBLE AS IMMIGRANT.**—The alien must establish that he—
- (i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and
 - (ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.
- (D) **BASIC CITIZENSHIP SKILLS.**—
- (i) **IN GENERAL.**—The alien must demonstrate that he either—
 - (I) meets the requirements of section 312(a) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or
 - (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.
 - (ii) **EXCEPTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED INDIVIDUALS.**—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.
 - (iii) **RELATION TO NATURALIZATION EXAMINATION.**—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312(a) may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.
- (2) **TERMINATION OF TEMPORARY RESIDENCE.**—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—
- (A) if it appears to the Attorney General that the alien was in fact not eligible for such status;
 - (B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or
 - (C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.
- (3) **AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.**—During the period an alien is in lawful temporary resident status granted under subsection (a)—
- (A) **AUTHORIZATION OF TRAVEL ABROAD.**—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and

casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an “employment authorized” endorsement or other appropriate work permit.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term “qualified designated entity” means an organization or person designated under paragraph (2).

(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89–732, or Public Law 95–145.

(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien’s seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) REQUIRED DISCLOSURES.—The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) AUTHORIZED DISCLOSURES.—The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) CRIME.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the

same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1). The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) after the end of the first year of the 2-year period described in subsection (b)(1)(A).

(B) USE OF FEES.—The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(C) IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—Not to exceed \$3,000,000 of the unobligated balances remaining in the account established in subparagraph (B) shall be available in fiscal year 1992 and each fiscal year thereafter for grants, contracts, and cooperative agreements to community-based organizations for outreach programs, to be administered by the Office of Special Counsel for Immigration-Related Unfair Employment Practices: *Provided*, That such amounts shall be in addition to any funds appropriated to the Office of Special Counsel for such purposes: *Provided further*, That none of the funds made available by this section shall be used by the Office of Special Counsel to establish regional offices.

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5) and (7)(A) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (2)(C) (relating to drug offenses) [, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana] .

(III) Paragraph (3) (relating to security and related grounds).

(IV) Paragraph (4) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

Subclause (IV) (prohibiting the waiver of section 212(a)(4)) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an “employment authorized” endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an “employment authorized” endorsement or other appropriate work permit.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106 (as in effect before October 1, 1996).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(C) JURISDICTION OF COURTS.—Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

(g) IMPLEMENTATION OF SECTION.—

(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term “resided continuously”, as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guar-

antee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the State program of assistance under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food and Nutrition Act of 2008; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than assistance under a State program funded under part A of title IV of the Social Security Act) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance

under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term “medical assistance” refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The Richard B. Russell National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) The The Carl D. Perkins Career and Technical Education Act of 2006.

(D) Title I of the Elementary and Secondary Education Act of 1965.

(E) The Headstart-Follow Through Act.

(F) Title I of the Workforce Innovation and Opportunity Act.

(G) Title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122), assistance shall be continued under such section with respect to an alien without regard to the alien’s adjustment of status under this section.

(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

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COMMITTEE CORRESPONDENCE

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6315

February 19, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler:

I am writing with respect to H.R. 3884, the "Marijuana Opportunity Reinvestment and Expungement Act of 2019." Thank you for consulting with the Committee on Small Business regarding the matters in H.R. 3884 that fall within the Committee's jurisdiction.

As a result of your consultation with us on this measure and in order to expeditiously move the bill to the floor, I forego further consideration of H.R. 3884. The Committee on Small Business takes this action with our mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and the Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues that fall within our jurisdiction. Further, I request your support for the appointment of an appropriate number of conferees from the Committee on Small Business during any House-Senate conference involving this or similar legislation.

Finally, I would appreciate your response to this letter confirming our understanding regarding H.R. 3884 and would ask that a copy of our exchange of letters on this matter be included in the Committee Report and the Congressional Record during floor consideration of the measure. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,



Nydia M. Velázquez
Chairwoman

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

July 13, 2020

The Honorable Nydia M. Velázquez
Chairwoman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Velázquez:

I am writing to you concerning H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” (the “MORE Act of 2019”). You wrote me a letter concerning this legislation on February 19, 2020.

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Small Business. I acknowledge that your Committee will not formally consider H.R. 3884 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 3884 which fall within your Committee’s Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham, Jr., Parliamentarian
The Honorable Steve Chabot, Ranking Member, Committee on Small Business

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

September 21, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler:

I am writing to you concerning H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement Act of 2019. There are certain provisions in the legislation which fall within the Rule X jurisdiction of the Committee on Oversight and Reform.

In the interest of permitting your Committee to proceed expeditiously on this bill, I am willing to waive this Committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill, the Committee on Oversight and Reform does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction. I request that you urge the Speaker to name Members of this Committee to any conference committee which is named to consider such provisions.

Please place this letter into the Congressional Record during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective Committees.

Sincerely,



Carolyn B. Maloney
Chairwoman

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

September 21, 2020

The Honorable Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Maloney:

I am writing to you concerning H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” (the “MORE Act of 2019”).

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Oversight and Reform. I acknowledge that your Committee will not formally consider H.R. 3884 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 3884 which fall within your Committee’s Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham, Jr., Parliamentarian
The Honorable James Comer, Ranking Member, Committee on Oversight and Reform

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

November 17, 2020

The Honorable Jerrold Nadler
Chair
Committee on the Judiciary
U.S. House of Representatives
2141 Rayburn House Office Building
Washington D.C. 20515

Dear Chair Nadler:

In recognition of the goal of expediting consideration of H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019,” the Committee on Natural Resources agrees to waive formal consideration of the bill as to provisions that fall within the Rule X jurisdiction of the Committee on Natural Resources.

The Committee on Natural Resources takes this action with the mutual understanding that, in doing so, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. Our Committee also reserves the right to seek appointment of conferees to any House-Senate conference involving this or similar legislation.

Thank you for agreeing to include our exchange of letters in the *Congressional Record*. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Raúl M. Grijalva
Chair
House Natural Resources Committee

Cc: The Honorable Rob Bishop, Ranking Member Committee on Natural Resources
The Honorable Jim Jordan, Ranking Member Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

November 18, 2020

The Honorable Raúl M. Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva:

I am writing to you concerning H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” (the “MORE Act of 2019”).

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Natural Resources. I acknowledge that your Committee will not formally consider H.R. 3884 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 3884 which fall within your Committee’s Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian
The Honorable Rob Bishop, Ranking Member, Committee on Natural Resources

MAJORITY MEMBERS:

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HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

November 24, 2020

MINORITY MEMBERS:

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Ranking Member
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GLENN THOMPSON, PENNSYLVANIA
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BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
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LLOYD SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
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RON WRIGHT, TEXAS
DANIEL MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
JEFFERSON VAN DREW, NEW JERSEY

The Honorable Jerrold L. Nadler
Chairman
House Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Nadler:

I write concerning H.R. 3884, the *Marijuana Opportunity Reinvestment and Expungement Act of 2019*. This bill was primarily referred to the Committee on the Judiciary, and additionally to the Committee on Education and Labor. As a result of Leadership and the Committee on Judiciary having consulted with me concerning this bill generally, I agree to forgo formal consideration of the bill so the bill may proceed expeditiously to the House floor.

The Committee on Education and Labor takes this action with our mutual understanding that by forgoing formal consideration of H.R. 3884, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction. I also request that you support my request to name members of the Committee on Education and Labor to any conference committee to consider such provisions.

Finally, I would appreciate a response confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the committee report for H.R. 3884 or in the *Congressional Record* during floor consideration thereof.

Sincerely,

A handwritten signature in blue ink that reads "Bobby Scott".

Robert C. "Bobby" Scott
Chairman

cc: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor
The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Nancy Pelosi, Speaker
The Honorable Steny Hoyer, Majority Leader
The Honorable Jason Smith, Parliamentarian

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

November 24, 2020

The Honorable Bobby Scott
Chairman
House Committee on Education and Labor
2175 House Office Building
Washington, DC 20515

Dear Chairman Scott:

I am writing to you concerning H.R. 3884, the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” (the “MORE Act of 2019”).

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Education and Labor. I acknowledge that your Committee will not formally consider H.R. 3884 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 3884 which fall within your Committee’s Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

MINORITY VIEWS

H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2019

September 10, 2020

MINORITY VIEWS

H.R.3884, the Marijuana Opportunity Reinvestment and Expungement Act of 2019, is flawed legislation that is designed to decriminalize marijuana at the federal level and remove it entirely from the Controlled Substances Act (CSA). This extreme and unwise bill would open the floodgates to marijuana cultivation, distribution, and sale within the United States—allowing bad actors and transnational criminal organizations to further exploit America’s addiction crisis.

Marijuana remains the most commonly used illicit drug in the United States, and the overall landscape of marijuana, including its legality, research, cultivation, distribution, importation and use, continues to evolve. Although still illegal under Federal law, an increasing number of states have passed legislation regarding the possession, use, and cultivation of marijuana and its associated products. While seizure amounts coming across the southwest border have decreased in recent years, Mexico remains the most significant foreign source for marijuana available in the United States.¹ Domestic marijuana production continues to increase, as does the availability and production of marijuana-related products including edibles, concentrates and vapes.² During the Obama-Biden Administration, the Drug Enforcement Administration (DEA) considered and denied state requests to reschedule marijuana under the CSA.

Marijuana Usage

Marijuana remains the most illicitly used drug in the United States.³ According to the National Survey on Drug Use and Health, there currently 24 million people (8.9 percent of the population) who use marijuana.⁴ In 2016, the survey also estimated that “approximately 6.5 percent of adolescents aged 12 to 17, 20.8 percent of young adults aged 18-25, and 7.2 percent of adults aged 26 or older used marijuana at least once in the past month.”⁵

State Marijuana Measures

Marijuana has been prohibited at the federal level since the 1937 Marijuana Tax Act, which was later replaced by the CSA in 1970.⁶ Since 1996, however, individual states and the District of Columbia have authorized a variety of measures relating to the use, possession, and cultivation of marijuana. Twenty-six states and the District of Columbia have decriminalized marijuana, meaning that marijuana use or possession is not penalized with jail time.⁷ Thirty-three

¹ U.S. DRUG ENFORCEMENT ADMINISTRATION (DEA), NATIONAL DRUG THREAT ASSESSMENT (NDTA) (Dec. 2019).

² *Id.*

³ U.S. DRUG ENFORCEMENT ADMINISTRATION (DEA), NATIONAL DRUG THREAT ASSESSMENT (NDTA) (Oct. 2018).

⁴ NATIONAL SURVEY ON DRUG USE AND HEALTH, <https://www.drugabuse.gov/drug-topics/trends-statistics/national-drug-early-warning-system-ndews/national-survey-drug-use-health> (last visited Sep. 4, 2020).

⁵ *Supra*, note 3.

⁶ The Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513 (1970).

⁷ *National Conference of State Legislatures*, <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx> (last visited Sep. 4, 2020).

states and the District of Columbia have legalized “medical” marijuana.⁸ Eleven states and the District of Columbia have laws that permit the recreational use of marijuana, and many more states have similar proposals on the ballot in 2020.⁹ Law-enforcement agencies have reported that a number of marijuana businesses in these states have financial backing from illicit revenue streams, including transnational criminal organizations.¹⁰

Petitions to Reschedule Marijuana under the Controlled Substances Act

On November 30, 2011, Governor Lincoln Chafee of Rhode Island and Governor Christine Gregoire of Washington submitted petitions to the DEA to reevaluate marijuana as a Schedule I controlled substance and to move marijuana to a less-restrictive schedule under the CSA. In August 2016, the DEA rejected the petitions after conducting a five-year evaluation process in conjunction with the FDA.¹¹ The DEA requested a scientific and medical evaluation and scheduling recommendation from the Department of Health and Human Services (HHS) and concluded that marijuana has a high potential for abuse, has no currently accepted medical use, and lacks an accepted level of safety for use under medical supervision.¹² The DEA has rejected similar petitions in the past.¹³

Problems and Flaws with H.R. 3884

H.R. 3884 disregards established science. This bill seeks to completely remove marijuana from the CSA despite HHS’s scientific and medical conclusion that marijuana has a high potential for abuse, has no currently accepted medical use, and lacks an accepted level of safety for use under medical supervision.¹⁴

H.R. 3884 would incentivize bad actors and transnational criminal organizations to flood American streets with drugs. This bill would effectively legalize marijuana at the Federal level and inevitably lead to an increase in the trafficking of marijuana by criminal organizations in the underground market, estimated to be worth \$40 billion or more in the United States.¹⁵

H.R. 3884 fails to set limitations on the amount of tetrahydrocannabinol in marijuana or its extracts or concentrates. While some states have placed limits on the tetrahydrocannabinol in marijuana concentrate products, none of the states that have legalized marijuana have placed any such restrictions..¹⁶ Studies on the effects of marijuana have shown that disorientation, impaired judgment, lack of concentration and slowed fine motor skills can occur in users.¹⁷ Studies also

⁸ Meredith Deliso, *Bill to decriminalize marijuana at federal level up for House vote next month*, ABC NEWS (Aug. 30, 2020), <https://abcnews.go.com/Politics/bill-decriminalize-marijuana-federal-level-house-vote-month/story?id=72714766>.

⁹ Sushree Mohanty, *U.S. States with Legal Recreational Marijuana Use in 2020* (Aug. 2020), <https://marketrealist.com/p/recreational-marijuana-states-2020/>.

¹⁰ *Supra*, note 1.

¹¹ Drug Enforcement Agency, *Denial of Petition to Initiate Proceedings to Reschedule Marijuana*, 81 Fed. Reg. 53687 (Aug. 12, 2016).

¹² *Id.*

¹³ Drug Enforcement Agency, *Denial of Petition to Initiate Proceedings to Reschedule Marijuana*, 76 Fed. Reg. 40551 (Jun. 30, 2011).

¹⁴ *Supra*, note 11.

¹⁵ Beau Kilmer, et al., *What America’s Users Spend on Illegal Drugs* (Feb. 2014), https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/wausid_results_report.pdf.

¹⁶ *Supra*, note 1.

¹⁷ NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), *MARIJUANA RESEARCH REPORT*, (Jul. 2020).

show that users who consume marijuana or its extracts or concentrates containing high levels of tetrahydrocannabinol will experience higher levels of impairment.¹⁸ The bill does not prohibit marijuana products from containing high levels of tetrahydrocannabinol, which will result in users with significantly increased impairment.

H.R. 3884 does nothing to discourage marijuana usage among American youth. The bill fails to ban flavored marijuana that may be appealing to teenagers, and also fails to funnel any tax revenue towards a public awareness campaign to discourage teen use of marijuana, modeled on successful anti-tobacco campaigns.

H.R. 3884 also does nothing to help the Federal government and scientific community to understand the effects of marijuana usage. According to the Centers for Disease Control and Prevention, marijuana directly affects parts of the brain responsible for memory, learning, attention, coordination, and others.¹⁹ Additionally, both frequent and long-term marijuana use has been linked to an increased risk of schizophrenia and psychosis in users.²⁰ The bill, however, fails to require states to track and submit data on mental health-related conditions related to marijuana use, including depression, bipolar disorder, psychosis, schizophrenia, opioid use disorders, and suicide.

CONCLUSION

H.R. 3884 would open the floodgates of marijuana cultivation, distribution, and sales throughout the United States with little to no controls whatsoever. Moreover, bad actors, domestic criminal enterprises, and transnational criminal organizations would exploit the numerous loopholes in this legislation. This bill is an extreme and unwise measure. Therefore, I am unable to support this bill and must respectfully dissent.



Jim Jordan
Ranking Member

¹⁸ Jennan A. Phillips, et al., *Marijuana in the Workplace: Guidance for Occupational Health Professionals and Employers: Joint Guidance Statement of the American Association of Occupational Health Nurses and the American College of Occupational and Environmental Medicine*, 63(4), SAGE JOURNALS, 139 (2015).

¹⁹ Meier, M.H., et al., *Persistent cannabis users show neuropsychological decline from childhood to midlife*, 109(40), PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA, E2657 (2012).

²⁰ Di Forti, Marta., et al., *Daily use, especially of high-potency cannabis, drives the earlier onset of psychosis in cannabis users*, 40(6), SCHIZOPHRENIA BULLETIN, 1509 (2013); Di Forti, Marta, et. al., *High-potency cannabis and the risk of psychosis*, 195(6), THE BRITISH JOURNAL OF PSYCHIATRY, 488 (2009).