CALENDAR No. 166

104TH CONGRESS, *1st Session* | SENATE | REPORT 104–129

SMALL BUSINESS LENDING ENHANCEMENT ACT OF 1995

Mr. BOND, from the Committee on Small Business, submitted the following

R E P O R T

OF THE

COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

TO ACCOMPANY

S. 895

together with

ADDITIONAL VIEWS

AUGUST 5 (legislative day, JULY 10), 1995.—Ordered to be printed

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AUGUST 5 (legislative day, JULY 10), 1995.—Ordered to be printed

Mr. BOND, from the Committee on Small Business, submitted the following

REPORT

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ADDITIONAL VIEWS

[To accompany S. 895]

The Committee on Small Business, to which was referred to bill (S. 895) to amend the Small Business Act of 1953 to reduce the level of participation by the Small Business Administration in certain business loans guaranteed by the federal government, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

I. SUMMARY OF THE BILL

The Small Business Lending Enhancement Act of 1995 reduces the level of participation by the Small Business Administration in certain business loans guaranteed by the federal government. This small business loan guarantee program originally was authorized by section 7(a) of the Small Business Act of 1953, and it has been amended on numerous occasions since enactment.

S. 895, as reported, will reduce the credit subsidy rate for the 7(a) loan program from 2.74 percent to 1.29 percent. In fiscal year 1995, an appropriation of $214 million was needed to support a loan program of $7.8 billion. Under S. 895, in fiscal year 1996, an appropriation of $133 million will support a program of $10.5 billion in loans. Thus, S. 895 will permit the appropriation to be reduced by approximately 39 percent, with a corresponding 35 percent increase in available 7(a) loan volume.

92–012

In addition, S. 895 will reduce the credit subsidy rate for the 504 Program from 0.57 percent to 0.33 percent. In fiscal year 1995, Congress appropriated $10 million to guarantee $1.75 billion in 504 loans. Under S. 895, the 504 Program will be able to grow to its authorized maximum, $2.65 billion, with a decreased appropriation of $8.7 million.

II. Background and Need for Legislation

The Small Business Administration was established in 1953 to serve and represent small businesses. From its inception, it has provided financial assistance to small businesses. SBA's major financial activity—the 7(a) Loan Guarantee Program—permits SBA to guarantee repayment of specified percentages of certain loans made by qualifying lending institutions to small businesses.

Small businesses' problems obtaining long-term debt financing date back as far as 60 years ago. During the period from 1935 until the early 1950's, several independent studies concluded that small and medium size businesses' access to equity and bond markets was limited, and that banks generally were reluctant to lend them money on a long-term basis.

An early study on the small business financing needs of manufacturers employing between 21 and 250 employees was made in 1935 by the Department of Commerce. This study concluded that 50 percent of all smaller manufacturers could not obtain long-term funds from any source whatsoever. Following World War II, the Committee for Economic Development, created to study small business credit needs, reported that more adequate long-term credit was the fundamental need of small business. In 1952, the Federal Reserve Board submitted a report to Congress stating that long-term credit for small businesses had diminished over the prior 20 to 30 years.

When Congress created the Small Business Administration in 1953, it authorized SBA to make direct loans, or to guarantee loans made by private lenders, to small businesses that cannot otherwise obtain reasonable financing. The 7(a) guaranteed loan program offers repayment terms and collateral requirements that better fit the borrower's needs than might be obtainable under usual bank policies, and transfers a portion of the risk of borrower default from the private lender to SBA.

In 1992, Price Waterhouse conducted an extensive evaluation of SBA's 7(a) Guaranteed Business Loan Program and made the following conclusions:

> The 7(a) program "appears to play a strong role in start-up financing" for small businesses, while commercial business loans without a government guarantee were not available for start-up businesses.
>
> 7(a) loans have an average term of 12 years, and SBA supplies long-term financing that is not available from normal lending sources.
>
> Small businesses that obtain 7(a) loans tend to be more aggressive firms with greater capital requirements and higher rates of growth in revenues and employment.

Without the 7(a) loan program, long term credit would be as elusive today for small businesses as it was prior to the creation of

SBA in 1953. Borrowers under the 7(a) program likely would not have obtained a loan without the government guarantee, or they might have been required to accept more onerous loan terms and conditions that could have jeopardized the potential success of their enterprises.

Today, our nation's 20 million small businesses make an important contribution to the economy by employing 54 percent of the country's work force and generating 50 percent of the gross domestic product. Most importantly, SBA's 7(a) loan guarantee program helps many small businesses sustain and expand operations and enables entrepreneurs to compete and gain entry into the economic mainstream.

As the needs of the 7(a) loan program have grown significantly during the past five years, Congress has appropriated funds to support the program as required by the Federal Credit Reform Act of 1990. This 1990 Act changed the budget treatment of credit programs so that the full cost of credit programs must be reflected in the budget year when the loans are made. Prior to 1990, an appropriation for a loan guarantee was required only in the event of a loan default that required a cash outlay.

The Credit Reform Act now requires that the discounted cost of new 7(a) loan guarantees be computed in the year the Federal government makes the commitment. Thus, when the Federal government guarantees a loan made by a bank or SBA licensed non-bank lender, funds must be appropriated to account for any cost to the government that might arise from the loan guarantee. This appropriation is the amount of federal subsidy for the guarantee.

Nearly 7,000 banks and non-banks lenders participate in SBA's 7(a) loan guaranty program, and 56,000 loans totaling $7.8 billion will be guaranteed under SBA's 7(a) business loan program during fiscal year 1995. At the beginning of Fiscal Year 1995 it was generally understood by SBA officials and the lending community that the 7(a) program was under-funded and would not be able to meet loan demand from the small business borrowing community. In spite of this funding constraint, SBA introduced new program features and special incentives that increased demand even further at the same time it was forced to take administrative steps to reduce loan making authority.

Early in fiscal year 1995, SBA decided to lower the maximum guaranteed amount on 7(a) loans from its existing level of $750,000 in order to dampen small business borrower demand. Under the reduced limit, SBA now guarantees no loans larger than $500,000, effectively reducing guarantee coverage to as low as $350,000 for some lenders. Even with the reduced guarantee limit, however, increased demand from the small business community led SBA later in the year to throttle back the program a second time. This time SBA imposed a prohibition on 7(a) guarantee availability for refinancing existing loans.

In a June 28, 1995 letter, the SBA Administrator informed the Committee of his belief that, in the absence of passage of S. 895 or similar legislation, the 7(a) loan program would run out of funds "on or about September 1."

III. Committee Action

7(a) LOAN PROGRAM

In addition to Committee field hearings held at several locations earlier in the year, the Committee held a hearing on the 7(a) loan program in Washington on May 18, 1995. Testimony from the Administrator of SBA, the lending community and small business borrowers stressed the importance of expanding the 7(a) program to enable it to meet borrower demand.

The SBA Administrator testified in support of an Administration proposal, announced in March 1995, that would increase interest rates and fees sufficiently to reduce the 7(a) credit subsidy rate to zero. After consideration of this proposal, the Committee concluded that the increases sought by the Administration to achieve this credit subsidy rate reduction were too large to impose at this time without threatening the continued viability of the program.

Following the Committee hearing, on June 8 Senator Bond introduced S. 895, the Small Business Lending Enhancement Act of 1995. As originally introduced, the bill proposed lowering the credit subsidy rate for the 7(a) loan program from 2.74 percent to 1.07 percent through a combination of fee increases and changes in guarantee percentages.

On July 13, 1995, during the Committee mark-up of S. 895, Senator Bond offered, on behalf of himself and Senators Bumpers, Burns, Snowe, and Wellstone, an amendment to the bill. This amendment reduces the credit subsidy rate to 1.29 percent, and gives the Administrator of SBA the discretion to lower the credit subsidy rate to 1.09 percent by adding up to an additional ⅜ of 1 percent to the guarantee fee charged to lenders. The amended version of S. 895 was ordered reported by a vote of 18–0.

There are five primary structural differences between S. 895, as reported by the Committee, and the Administration's proposal:

1. SBA's plan would have increased the maximum interest rate that the lender can charge by ½ of 1 percent and required that this interest rate increase paid by the borrower be passed through to SBA. S. 895 has no similar provision.
2. SBA's plan would have charged its up front guarantee fee against the gross amount of the loan. S. 895 applies its guarantee fee against the guaranteed amount of the loan only.
3. S. 895 increases the maximum guaranteed amount of a loan originated under the Preferred Lenders Program to 75 percent from 70 percent. The SBA plan would not have increased this percentage.
4. S. 895 decreases the maximum guaranteed amount of a loan originated under the LowDoc program from 90 percent to 80 percent. SBA's plan would have reduced this percentage to 85 percent.
5. SBA's plan would have given a 10 basis point discount from the annual fee for lenders participating in the Preferred Lenders Program. S. 895 has no similar provision.

The Committee recognizes the need to encourage use of SBA's Preferred Lender Program (PLP). Currently, fewer than 10 percent of all 7(a) loans are made through the PLP, under which SBA delegates underwriting decisions and other administrative responsibilities to lenders with strong lending records. The Program mini-

mizes agency involvement in individual loan approvals and relieves SBA from involvement in the asset disposition business.

The Committee believes increasing the guaranty percentage on loans submitted through the PLP from the current 70 percent to 75 percent under S. 895 will encourage lender participation in this program. It is the intent of the Committee that PLP usage be monitored carefully. The Chairman and other members of the Committee believe further reliance on lenders is necessary to reduce future SBA overhead and exposure under its business loan guarantee programs. Additional measures may be considered, if necessary, to increase further the percentage of 7(a) loans originated and administered with the type of substantial lender involvement required under PLP. The Committee expects SBA will continue to maintain strict quality control over PLP and carefully monitor the default, loss and recovery rates of PLP lenders.

LOWDOC LOAN PROGRAM

Under the LowDoc loan program, lenders may make 7(a) loans of $100,000 or less after SBA approves a one page form from the lender. The current guarantee rate under the LowDoc program is 90 percent of the loan amount. SBA estimates that more than 50 percent of the 7(a) loans made in fiscal year 1995 will be LowDoc loans.

The Committee is concerned about the impact the large volume of LowDoc loans could have on the long term soundness of the 7(a) loan portfolio. Testimony before the Committee has pointed out that a lender has little exposure when it makes a LowDoc loan, since the government has guaranteed 90 percent of the loan and many lenders immediately sell the loan at a premium on the secondary market. Therefore, S. 895 lowers the guarantee rate on LowDoc loans to 80 percent from 90 percent. The Committee believes increasing the exposure of lenders who make LowDoc loans will encourage them to continue to make sound credit decisions. The Committee expects SBA will continue to maintain strict quality control over LowDoc and carefully monitor the default, loss and recovery rates of LowDoc lenders.

In order to keep LowDoc loans available and affordable to start ups and other businesses with limited cash flow, S. 895 does not increase the guarantee fee for LowDoc loans above its current rate of 2 percent.

504 LOAN PROGRAM

In its March proposal, the Administration recommended that the credit subsidy rate for the 504 Certified Development Program be reduced to zero. The Committee has some concern that taking the credit subsidy rate to zero might threaten the viability of the 504 Program. Therefore, S. 895 includes a section that imposes a modest fee increase to reduce the credit subsidy rate for the 504 Program from 0.57 percent to 0.33 percent.

FEDERAL CREDIT REFORM ACT OF 1990

The Committee in concerned about the calculation of the credit subsidy rate that determines the level of appropriation required to

support the 7(a) guaranteed loan program. Although SBA and CBO make credit subsidy estimates, OMB has the final say in determining the operative credit subsidy rate. Critical assumptions about the future performance of the 7(a) loan portfolio and SBA's liquidation recovery effort are made, frequently without prior explanation to the Committee, that have a dramatic impact on the credit subsidy rate and the cost of the 7(a) program.

For example, the Committee was informed by SBA that the credit subsidy rate for Fiscal Year 1996, absent any changes to the Small Business Act, will be 2.76 percent. SBA also told the Committee, however, that achieving a zero subsidy rate and eliminating the need for a subsidy appropriation would require fee increases and other program changes sufficient to reduce the subsidy rate by 3.66 percent. This 90 basis point increase was described by SBA as either a "hedge" against increased losses from borrowers paying higher fees to the government or a reduction in the estimated recovery rate by SBA from its liquidation portfolio. To date, only informal and anecdotal explanations have been presented to the Committee to support this latest description of the credit subsidy rate calculation.

While the Committee has accepted the present credit subsidy rate calculation for the purposes of determining borrower and lender fees under S. 895, careful study of this matter will be required as the Committee considers additional long term reforms for the SBA's small business finance programs.

IV. Committee Vote

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote was recorded on July 13, 1995.

A motion by Senator Bond to adopt S. 895, as amended by an amendment in the nature of the substitute, to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, was approved 18–0, with the following Senators voting in the affirmative: Bond, Bumpers, Pressler, Burns, Coverdell, Kempthorne, Bennett, Hutchinson, Warner, Frist, Snowe, Levin, Harkin, Kerry, Liebermann, Wellstone, Heflin and Lautenberg.

V. Cost Estimate

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 3, 1995.

Hon. Christopher S. Bond,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 895, the Small Business Lending Enhancement Act of 1995.

Enactment of S. 895 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neil, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 895.

2. Bill title: Small Business Lending Enhancement Act of 1995.

3. Bill status: As ordered reported by the Senate Committee on Small Business on July 13, 1995.

4. Bill purpose: S. 895 would amend the general business loan guaranty program administered by the Small Business Administration (SBA) to reduce the percentage of loans that the government guarantees. Lenders of guaranteed business loans would be able to request a further reduction in the level of SBA participation.

S. 895 would provide for new fees and increases in fees on loans guaranteed by SBA under sections 7(a) and 504 of the Small Business Act. The bill would authorize SBA to raise existing guarantee fees for the loans made under the 7(a) program, and to establish an annual fee charged to the lenders. The guarantee fees would be payable by the lenders but could be charged to the borrowers, but the new annual fee would not be passed on to the borrowers. The bill also would permit SBA to increase the guarantee fee for the 7(a) program by a specified amount at the Administrator's discretion during the first 90 days of any fiscal year.

Finally, S. 895 also would authorize SBA to assess and collect an annual fee for the 504 loan program. The fee would be charged to the borrower on the outstanding balance of the loan and the proceeds would be used to offset the cost of making the guarantees.

5. Estimated cost to the Federal Government: This estimate assumes that S. 895 would be enacted by the beginning of fiscal year 1996, and that the estimated authorization amounts would be appropriated for fiscal years 1996 and 1997. Based on information from the SBA, CBO estimates that enacting S. 895 would reduce authorization levels by $242 million for loans to be guaranteed in 1996 and 1997. The following table summarizes the estimated budgetary impact of S. 895.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Spending Under Current Law:						
Authorization level [1]	202	225	280	0	0	0
Estimated outlays	208	212	255	100	15	0
Proposed Changes:						
Estimated authorization level	0	−198	−134	0	0	0
Estimated outlays	0	−67	−117	−49	−7	0
Projected Spending Under S. 895:						
Authorization level [1]	202	117	146	0	0	0
Estimated outlays	208	145	138	51	8	0

[1] The 1995 level is the amount appropriated for that year

The costs of this bill fall within budget function 370.

6. Basis of estimate: Under current law SBA is authorized to guarantee $13 billion in loans for 1996 and $16.1 billion in 1997 for both the section 7(a) program and the section 504 program. (Fiscal year 1995 appropriations provide for $11.4 billion in guaranteed loans.) CBO estimates that reducing the percentage of SBA participation in guaranteed loans would have no significant budgetary impact because the bill would not change the amount of loans SBA is authorized to guarantee and the percentage of SBA participation in guaranteed loans would not change significantly. Based on information from SBA, we expect that the reduction in SBA participation would enable SBA to slightly increase the number of loans guaranteed but would not significantly increase administrative costs.

Enacting S. 895, however, would reduce the average subsidy for loans guaranteed by SBA because the bill would result in additional fees paid to the federal government. CBO estimates that the increased fees on new loan guarantees would reduce the average subsidy rate from approximately 2 percent to 1.1 percent for the 7(a) program, and from approximately 0.6 percent to about 0.2 percent for the 504 program. The reduction in subsidy rates would reduce the amount of appropriations needed to subsidize SBA loan guarantees from an estimated $225 million to $117 million in 1996, and from $280 million to $146 million in 1997, assuming that appropriations are sufficient to fund the amounts of loan guarantees authorized for those years. The 7(a) and 504 programs have not been authorized beyond 1997.

The above estimate assumes that SBA would exercise the bill's discretionary authority to raise guarantee fees for the 7(a) program. If SBA chose not to exercise this authority, the subsidy rate for 7(a) guarantees would fall from 2 percent to 1.3 percent and the estimated savings would be smaller.

7. Pay-as-you-go considerations: None.

8. Estimated cost to state and local governments: None

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Rachel Forward.

12. Estimate approved by: Robert A. Sunshine, (for Paul N. Van de Water, Assistant Director for Budget Analysis).

VI. Evaluation of Regulatory Impact

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VII. Section-by-Section Analysis

SECTION 1

This section entitles the Act the "Small Business Lending Enhancement Act of 1995."

SECTION 2

In general, this section both amends and reorganizes section 7(a)(2) of the Small Business Act and reduces the percentage of a loan that can be guaranteed under SBA's 7(a) program.

As amended, section 7(a)(2)(A) ensures that Preferred Lenders are granted a level of government participation equivalent to that available to all other lenders. This provision also reduces the maximum percentage of a federal guarantee to 75 percent of the loan balance on any loan exceeding $100,000. For loans of less than or equal to $100,000 (i.e., LowDoc loans), the guaranteed participation level is reduced to 80 percent.

As amended, section 7(a)(2)(B) gives individual lenders the discretion to accept lower level of government participation but prohibits the Administration from prioritizing or ranking lenders based on guarantee percentages.

Section 7(a)(2)(C) prohibits Preferred Lenders from charging an interest rate that exceeds the maximum interest rate established by SBA. This subsection also defines the "Preferred Lender Program" and authorizes such lenders to make and close guaranteed loans without prior Administration approval and enables them to serve and liquidate loans.

SECTION 3

Subsection (a) amends section 7(a)(18) of the Small Business Act. Section 7(a)(18)(A) revises the up-front guarantee fees on 7(a) loans. The fee charged on the guaranteed amount between $0 and $250,000 is increased to 2.5 percent. The fee on guaranteed amounts of $250,001 to $500,000 grows to 3.0 percent. The fee on guaranteed amounts of $500,001 to $750,000 becomes 3.5 percent.

Section 7(a)(18)(B) provides a special "carve out" for LowDoc loans. These loans, whose guaranteed portion does not exceed $80,000, are assessed a guarantee fee of 2.0 percent of the guaranteed amount.

Section 7(a)(18)(C) gives SBA discretion to implement a one-time, across-the-board increase of up to 0.375 percent to the guarantee fee within 90 days after the beginning of the Fiscal Year if necessary to meet projected demand under the 7(a) program. SBA must give the Committees on Small Business of the Senate and House of Representatives 15 days advance notice of the action.

Subsection (b) repeals the option for banks to retain 50 percent of the guaranty fee for small and rural loans.

SECTION 4

Subsection (a) adds a new section 7(a)(23) to the Small Business Act. Section 7(a)(23)(A) requires the Administration to collect, from the lender, a fee of up to .50 percent of the outstanding balance of the guaranteed amount of a 7(a) loan.

Section 7(a)(23)(B) clarifies that the annual fee mentioned above must be paid by the lender and not charged directly to the borrower.

Subsection (b) restates existing law authorizing SBA to collect a fee, for any guaranteed loan sold into the secondary market, in an amount not to exceed 50 percent of the portion of the sale price

that is in excess of 110 percent of the outstanding principal amount of the guaranteed loan.

SECTION 5

This section adds a new section 7(a)(24) to the Small Business Act, requiring SBA to notify the Committees on Small Business of the Senate and the House of Representatives at least 15 days prior to making any significant policy or administrative change in the 7(a) program.

SECTION 6

This section amends section 503(b) of the Small Business Investment Act of 1958 to authorize SBA to collect an annual fee equal to 0.0625 percent of the outstanding balance of 504 program loans, to be used to offset SBA's 504 program costs.

VIII. ADDITIONAL VIEWS OF SENATOR BUMPERS

I write separately only to emphasize recent history and experience in the SBA 7(a) loan program which speak to the need for S. 895's swift completion.

As the Committee report indicates, SBA has been in the business of helping small borrowers find adequate and affordable financing since its inception in 1953. In the early years, most loans were direct loans funded entirely with appropriated dollars. Over the years, the emphasis shifted to loan guarantees rather than direct loans because guarantees cost substantially less. This was true both before and after the Credit Reform Act of 1990. Until 1987, SBA borrowers paid a guaranty fee of one per cent of the amount guaranteed which helped to offset the cost of the program. This fee was doubled to two per cent in 1987, resulting in a substantial savings in the appropriated cost of 7(a) loans.

For most of the 1980's, the 7(a) program provided less than $3 billion annually in small business loan guarantees. During the Bush Administration, however, demand for the program began to escalate very dramatically due to several factors. First was the infamous "credit crunch" which was produced largely by financial industry reforms instituted after the calamitous Savings and Loan debacle. Banks and other lenders tightened small business lending criteria while the Federal Reserve maintained a relatively tight money supply and high interest rates. These factors encouraged more lenders to demand that borrowers seek an SBA guaranty before extending the kind of long-term credit which many borrowers needed for expansion or even for regular operating capital. The already conservative banking mind-set toward small business was tightened almost to the breaking point.

No doubt, the credit crunch helped in no small way to drive the economy into the recession of 1991–92. That recession, however, drove even more small borrowers to seek help from SBA because of generally poor economic performance. In the process, more bankers and borrowers during 1989–92 were becoming aware of the many advantages of the SBA 7(a) program. The Bush Administration recognized the counter-cyclical potential for the 7(a) program, and it supported large increases in the program to help encourage and sustain economic recovery. I also supported increases in 7(a) appropriations both as Chairman of the Small Business Committee and as a member of the Appropriations Committee.

The 7(a) program grew during the Bush Administration from slightly over $3 billion to almost $6 billion. Congress during this time was hard-pressed to meet the ever increasing demand with concurrent program appropriations. The program during that time had a subsidy cost of slightly over 5%, meaning that $1 billion in loan authority required $50 million in appropriated funds. In 1992, demand for the program was such that funding was exhausted and

two supplemental appropriations measures were enacted and signed by President Bush.

This trend continued in 1993, and by late spring appropriated funds were exhausted and the program closed down for several weeks. Congress has always recognized the economic importance of the 7(a) program, but it became clear that reliance on emergency supplemental funding and traumatic program shutdowns could not continue in the long run.

Shortly after the Clinton Administration took office in 1993, the Senate Small Business Committee undertook, with the Administration's full cooperation, sharply reducing the cost of SBA 7(a) loans to the Treasury, while at the same time meeting the demands of small business borrowers for affordable credit. In the summer of 1993, legislation was enacted and signed by the President which reduced the subsidy cost of 7(a) loans from 5.4% to 2.2%, thus more than doubling the amount of loans which could be made with the same amount of appropriated dollars.

The effect of this change was dramatic. In 1993, SBA made about $6 billion in 7(a) loans but required $342 million in appropriations to fund the program. In the current year, almost $8 billion in loans will be made with about $200 million in appropriations. I am extremely proud of these savings, but they are still not enough to keep this ever-growing program on a sound footing in this era of declining federal spending.

Finally, a comment about S. 895 and the Chairman's work on this bill is in order. I did not elect to cosponsor this bill when it was introduced because I was concerned that the increases in fees charged to 7(a) borrowers were simply too steep, in my view, for the program to be workable. Those borrowers who are willing to take a loan at any price are not likely to be very good borrowers, and I felt we were moving dangerously close to that point. The same could be said of the Administration's 'zero-subsidy' proposal which was considered and not adopted.

The Chairman is to be commended for the flexibility and progressiveness he has demonstrated in preparing the Committee amendment which I was pleased to cosponsor at markup. The maximum, marginal guaranty fee for borrowers was reduced from the original 5% to 3.5%, with this number being applied only to borrowers seeking over $500,000 in financing. Moreover, the smallest borrowers—those using the "low doc" program for loans under $100,000—will face no increased guaranty fees at all. The present 2% guaranty fee will continue to be applied to low doc loans. Both of these steps represent common sense and fairness, two virtues which I wish were more abundant in this Congress.

DALE BUMPERS.

IX. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part of section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT OF 1953

SEC. 636. ADDITIONAL POWERS.

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

[(2) In agreements to participate in loans on a deferred basis under the subsection, such participation by the Administration, except as provided in paragraph (6), shall be—

[(A) not less than 90 percent of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $155,000: *Provided,* That the percentage of participation by the Administration may be reduced below 90 percent upon request of the participating lender; and

[(B) subject to the limitation in participation (3)—

[(i) not less than 70 percent nor more than 85 percent of the financing outstanding at the time of disbursement if such financing exceeds $155,000: *Provided,* That the participation by the Administration may be reduced below 70 percent upon request of the participating lender;

[(ii) not less than 75 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is more than 10 years, except that the participation by the Administration may be reduced below 75 percent upon request of the participating lender;

[(iii) not less than 85 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is 10 years or less, except that the participation by the Administration may be reduced below 85 percent upon request of the participating lender; and

[(iv) not less than 85 percent nor more than 90 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (14) or (16).

The Administration shall not use the percent of guarantee requested as a criterion for establishing priorities in approving guarantee requests nor shall the Administration reduce the percent guaranteed to less than the above specified percentums other than by determination made on each application. Notwithstanding subparagraphs (A) and (B), the Administration's participation under the Preferred Lenders Program or any successor thereto shall be not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the request of the participating lender. As used in this subsection, the term "Preferred Lenders Program" means a program under which a written agreement between the lender and the Administration delegates to the lender (l) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (II) authority to service and liquidate such loans. 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, which is made applicable to other than guarantees under this subsection.]

"(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), 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 $100,000; or

"(ii) 80 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 $100,000.

"(B) REDUCED PARTICIPATION UPON REQUEST.—

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

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

"(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAMS.—

"(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) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term 'Preferred Lenders Programs' means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement be-

tween 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) authority to service and liquidate such loans.".

SEC. 636. ADDITIONAL POWERS.

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

* * * * * * *

[(18) The Administration shall collect a guarantee fee equal to two percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less. The fee shall be payable by the participating lending institution and may be charged to the borrower.**]**

"(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, in an amount equal to the sum of—

"(i) 2.5 percent of the amount of the deferred participation share of the loan that is less than or equal to $250,000;

"(ii) if the deferred participation share of the loan exceeds $250,000, 3 percent of the difference between—

"(I) $500,000 or the total deferred participation share of the loan, whichever is less; and

"(II) $250,000; and

"(iii) if the deferred participation share of the loan exceeds $500,000, 3.5 percent of the difference between—

"(I) $750,000 or the total deferred participation share of the loan, whichever is less; and

"(II) $500,000.

"(B) EXCEPTION FOR CERTAIN LOANS.—Notwithstanding subparagraph (A), if the total deferred participation share of a loan guaranteed under this subsection is less than or equal to $80,000, the guarantee fee collected under subparagraph (A) shall be in an amount equal to 2 percent of the total deferred participation share of the loan.

"(C) DISCRETIONARY INCREASE.—Notwithstanding subparagraphs (A) and (B), during the 90-day period beginning on the first day of any fiscal year, the Administration may increase the guarantee fee collected under this paragraph by an amount not to exceed 0.375 percent of the total deferred participation share of the loan, if the Administration

"(i) determines that such action is necessary to meet projected borrower demand for loans under this subsection during that fiscal year, based on the subsidy cost of the loan program under this subsection and amounts provided in advance for such program in appropriations Acts; and

"(ii) not less than 15 days prior to imposing any such increase, notifies the Committees on Small Business of the Senate and the House of Representatives of the determination made under clause (i).".

(b) REPEAL OF PROVISIONS ALLOWING RETENTION OF FEES BY LENDERS.—Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19)) is amended—

(1) in subparagraph (B)—

(A) by striking "shall (i) develop" and inserting "shall develop"; and

(B) by striking ", and (ii)" and all that follows through the end of the subparagraph and inserting a period; and

(2) by striking subparagraph (C).

SEC. 636. ADDITIONAL POWERS.

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

* * * * * * *

"(23) ANNUAL FEE.—

"(A) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

"(B) PAYER.—The annual fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.".

"(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.".

SEC. 634. GENERAL POWERS.

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(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation * * *

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(4)(A) [The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan

guaranteed by the Administration.] *The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration.* Any such fee[s] imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided,* That such fee[s] shall not be charged to the borrower whose loan is guaranteed: *Provided further,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.

SEC. 697. DEVELOPMENT COMPANY DEBENTURES.

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(b) STATUTORY TERMS AND CONDITIONS.—No guarantee may be made with respect to any debenture under subsection (a) of this section unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 696 of this title;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 683(b) of this title;

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made; [and]

(6) the Administration approves each loan to be made from such proceeds[.]*; and*

"(7) with respect to each loan made from the proceeds of such debenture, the Administration—

"(A) assesses and collects a fee, which shall be payable by the borrower, in an amount equal to 0.0625 percent per year of the outstanding balance of the loan; and

"(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).".

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