

108TH CONGRESS
2D SESSION

S. 2915

To reauthorize programs under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) through September 30, 2005.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2004

Ms. SNOWE (for herself and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To reauthorize programs under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) through September 30, 2005.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. COMBINATION FINANCING.**

4 Section 7(a) of the Small Business Act (15 U.S.C.
5 636(a)) is amended by adding at the end the following:

6 “(31) COMBINATION FINANCING.—

7 “(A) DEFINITIONS.—As used in this para-
8 graph—

1 “(i) the term ‘combination financing’
2 means financing comprised of a loan guaran-
3 teed under this subsection and a commercial
4 loan; and

5 “(ii) the term ‘commercial loan’ means a
6 loan which is part of a combination financing
7 and no portion of which is guaranteed by the
8 Federal Government.

9 “(B) APPLICABILITY.—This paragraph applies
10 to a loan guarantee obtained by a small business
11 concern under this subsection, if the small business
12 concern also obtains a commercial loan.

13 “(C) COMMERCIAL LOAN AMOUNT.—In the case
14 of any combination financing, the amount of the
15 commercial loan which is part of such financing
16 shall not exceed the gross amount of the loan guar-
17 anteed under this subsection which is part of such
18 financing.

19 “(D) COMMERCIAL LOAN PROVISIONS.—The
20 commercial loan obtained by the small business con-
21 cern—

22 “(i) may be made by the participating
23 lender that is providing financing under this
24 subsection or by a different lender;

25 “(ii) may be secured by a senior lien; and

1 “(iii) may be made by a lender in the Pre-
2 ferred Lenders Program, if applicable.

3 “(E) COMMERCIAL LOAN FEE.—A one-time fee
4 in an amount equal to 0.7 percent of the amount of
5 the commercial loan shall be paid by the lender to
6 the Administration if the commercial loan has a sen-
7 ior credit position to that of the loan guaranteed
8 under this subsection. Any fee under the preceding
9 sentence shall be paid by the participating lender
10 and shall not be charged to the borrower.

11 “(F) DEFERRED PARTICIPATION LOAN SECU-
12 RITY.—A loan guaranteed under this paragraph may
13 be secured by a subordinated lien.

14 “(G) COMPLETION OF APPLICATION PROC-
15 ESSING.—The Administrator shall complete proc-
16 essing of an application for combination financing
17 under this paragraph pursuant to the program au-
18 thorized by this subsection as it was operating on
19 October 1, 2003.

20 “(H) BUSINESS LOAN ELIGIBILITY.—Any
21 standards prescribed by the Administrator relating
22 to the eligibility of small business concerns to obtain
23 combination financing under this subsection, which
24 are in effect on September 1, 2004, shall apply with
25 respect to combination financings made under this

1 paragraph. Any modifications to such standards by
2 the Administrator after such date shall not unre-
3 asonably restrict the availability of combination fi-
4 nancing under this paragraph relative to the avail-
5 ability of such financing before such modifications.”.

6 **SEC. 2. LOAN GUARANTEE FEES.**

7 (a) IN GENERAL.—Section 7(a)(23)(A) of the Small
8 Business Act (15 U.S.C. 636(a)(23)(A)) is amended to
9 read as follows:

10 “(A) PERCENTAGE.—With respect to each loan
11 guaranteed under this subsection, the Administrator
12 shall, in accordance with such terms and procedures
13 as the Administrator shall establish by regulation,
14 assess and collect an annual fee in an amount equal
15 to 0.36 percent of the outstanding balance of the de-
16 ferred participation share of the loan.

17 (b) GUARANTEE FEES.—Section 7(a)(18) of the
18 Small Business Act (15 U.S.C. 636(a)(18)) is amended
19 to read as follows:

20 “(18) GUARANTEE FEES.—With respect to each
21 loan guaranteed under this subsection (other than a
22 loan that is repayable in 1 year or less), the Admin-
23 istration shall collect a guarantee fee, which shall be
24 payable by the participating lender, and may be
25 charged to the borrower, as follows:

1 “(A) A guarantee fee equal to 1 percent of
2 the deferred participation share of a total loan
3 amount that is not more than \$150,000.

4 “(B) A guarantee fee equal to 2.5 percent
5 of the deferred participation share of a total
6 loan amount that is more than \$150,000, but
7 not more than \$700,000.

8 “(C) A guarantee fee equal to 3.5 percent
9 of the deferred participation share of a total
10 loan amount that is more than \$700,000.

11 “(D) In addition to the fee under subparagraph
12 (C), a guarantee fee equal to 0.25 per-
13 cent of the amount, if any, by which the de-
14 ferred participation share of the loan exceeds
15 \$1,000,000.”.

16 **SEC. 3. EXPRESS LOAN PROVISIONS.**

17 Section 7(a) of the Small Business Act (15 U.S.C.
18 636(a)), as amended by section 1, is further amended by
19 adding at the end the following:

20 “(32) EXPRESS LOAN PROVISIONS.—

21 “(A) DEFINITIONS.—As used in this para-
22 graph:

23 “(i) The term ‘express lender’ means
24 any lender authorized by the Administrator

1 to participate in the Express Loan Pro-
2 gram.

3 “(ii) The term ‘express loan’ means
4 any loan made pursuant to this paragraph
5 in which a lender utilizes to the maximum
6 extent practicable its own loan analyses,
7 procedures, and documentation.

8 “(iii) The term ‘Express Loan Pro-
9 gram’ means the program for express loans
10 established by the Administrator under
11 paragraph (25)(B), as in existence on
12 April 5, 2004, with a guaranty rate of not
13 more than 50 percent.

14 “(B) RESTRICTION TO EXPRESS LEND-
15 ER.—The authority to make an express loan
16 shall be limited to those lenders deemed quali-
17 fied to make such loans by the Administrator.
18 Designation as an express lender for purposes
19 of making an express loan shall not prohibit
20 such lender from taking any other action au-
21 thorized by the Administrator for that lender
22 pursuant to this subsection.

23 “(C) GRANDFATHERING OF EXISTING
24 LENDERS.—Any express lender shall retain
25 such designation unless the Administrator de-

1 termines that the express lender has violated
2 the law or regulations promulgated by the Ad-
3 ministrator or modifies the requirements to be
4 an express lender and the lender no longer sat-
5 isfies those requirements.

6 “(D) MAXIMUM LOAN AMOUNT.—The max-
7 imum loan amount under the Express Loan
8 Program is \$2,000,000.

9 “(E) OPTION TO PARTICIPATE.—Except as
10 otherwise provided in this paragraph, the Ad-
11 ministrator shall take no regulatory, policy, or
12 administrative action, without regard to whether
13 such action requires notification pursuant to
14 paragraph (24), that has the effect of—

15 “(i) requiring a lender to make an ex-
16 press loan pursuant to subparagraph (D);

17 “(ii) limiting or modifying any term
18 or condition of deferred participation loans
19 made under this subsection (other than ex-
20 press loans) unless the Administrator im-
21 poses the same limit or modification on ex-
22 press loans;

23 “(iii) transferring or re-allocating
24 staff, staff responsibilities, resources, or
25 funding, if the result of such transfer or

1 re-allocation would be to increase the aver-
2 age loan processing, approval, or disburse-
3 ment time above the averages for those
4 functions as of October 1, 2003, for loan
5 guarantees approved under this subsection
6 by employees of the Administration or
7 through the Preferred Lenders Program;
8 or

9 “(iv) otherwise providing any incentive
10 or disincentive which encourages lenders or
11 borrowers to make or obtain loans under
12 the Express Loan Program instead of
13 under the general loan authority of this
14 subsection.

15 “(F) COLLECTION AND REPORTING OF
16 DATA.—For all loans in excess of \$250,000
17 made pursuant to the authority set forth in
18 subparagraph (D), the Administrator shall, to
19 the extent practicable, collect data on the pur-
20 pose for each such loan. The Administrator
21 shall report monthly to the Committee on Small
22 Business and Entrepreneurship of the Senate
23 and the Committee on Small Business of the
24 House of Representatives on the number of
25 such loans and their purposes.”.

1 SEC. 4. STANDARDS FOR LOANS MADE WITH DEFERRED 2 PARTICIPATION.

3 Section 7(a) of the Small Business Act (15 U.S.C.
4 636(a)), as amended by sections 1 and 3, is further
5 amended by adding at the end the following:

6 “(33) STANDARDS FOR LOANS MADE WITH DE-
7 FERRED PARTICIPATION.—Deferred participation
8 loans made on or after October 1, 2004, under this
9 subsection shall have the same terms and conditions
10 (including maximum gross loan amounts and collat-
11 eral requirements) as were applicable to loans made
12 under this subsection on October 1, 2003, except as
13 otherwise provided in paragraph (18)(D), paragraph
14 (31), or paragraph (32) and subject to the
15 \$1,500,000 limitation on the total amount out-
16 standing and committed in paragraph (3)(A), as in
17 effect on October 1, 2004. This paragraph shall not
18 preclude the Administrator from taking such action
19 as necessary to maintain the loan program carried
20 out under this subsection, subject to appropria-
21 tions.”.

22 SEC. 5. INCREASE IN GUARANTEE AMOUNT AND INSTITU-
23 TION OF ASSOCIATED FEE.

24 Section 7(a)(3) of the Small Business Act (15 U.S.C.
25 636(a)(3)) is amended—

7 SEC. 6. EFFECTIVE DATES.

8 The amendments made by this Act shall be effective
9 beginning on the date of enactment of this Act and ending
10 on September 30, 2005.