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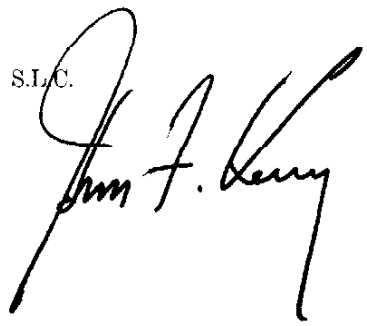

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. KERRY (for himself) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958, through May 15, 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "SBA Emergency Authorization Extension Act of 2004".

SEC. 2. SBA PROGRAM AUTHORIZATIONS.

(a) IN GENERAL.—Section 1 of Public Law 108–172 (117 Stat. 2065) is amended—

(1) in subsection (a), by striking "March 15" each place that term appears and inserting "May 15"; and

(2) by adding at the end the following:

"(c) EXCEPTION FOR OTHER PROGRAMS.—Notwithstanding subsection (a), title V of the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) and section 29 of the Small Business Act (15 U.S.C. 656), including any pilot program, shall remain authorized through September 30, 2004.".

(b) CONFORMING AMENDMENT.—Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking "October 1, 2003" and inserting "October 1, 2004".

SEC. 3. WOMEN'S BUSINESS CENTERS.

(a) IN GENERAL.—Section 29(k) of the Small Business Act (15 U.S.C. 656(k)) is amended—

(1) in paragraph (2), by adding at the end the following:

"(C) FUNDING PRIORITY.—Subject to available funds, and reservation of funds, the Administration shall, for each fiscal year, allocate—

"(i) $150,000 for each women's business center established under subsection

(b), except for any center that requests a lesser amount;

"(ii) from the remaining funds, not more than $125,000, in equal amounts, to each women's business center established under subsection (l), to the extent such funds are reserved under subsection (k)(4)(A), except for any center that requests a lesser amount; and

"(iii) any funds remaining after allocations are made under clauses (i) and (ii) to new eligible women's business centers and eligible women's business centers that did not receive funding in the prior fiscal year under subsection (b)."; and

(2) in paragraph (4)(A), by adding at the end the following:

"(v) For fiscal year 2004, 48 percent.".

(b) SUNSET DATE.—The amendments made by this section are repealed on October 1, 2004.

SEC. 4. 7(A) LOAN GUARANTEE PROGRAM.

(a) COMBINATION LOANS.—

1 (1) IN GENERAL.—Section 7(a) of the Small
2 Business Act (15 U.S.C. 636(a)) is amended by add-
3 ing at the end the following:
4 "(31) COMBINATION LOANS.—
5 "(A) DEFINED TERM.—As used in this
6 paragraph, the term 'combination loan' means a
7 financing comprised of a loan guaranteed under
8 this subsection and a loan not guaranteed by
9 Federal, State, or local government.
10 "(B) AUTHORITY.—
11 "(i) IN GENERAL.—A small business
12 concern may combine a loan guaranteed
13 under this subsection with a loan that is
14 not guaranteed by Federal, State, or local
15 government.
16 "(ii) LENDER. The nonguaranteed
17 loan under clause (i) may be made by—
18 "(I) the lender that provided the
19 financing under this subsection or a
20 different lender; or
21 "(II) a lender in the Preferred
22 Lenders Program.
23 "(iii) SECURITY.—The nonguaranteed
24 loan under clause (i) may be secured by a
25 senior lien and the guaranteed loan under

this subsection may be secured by a subordinated lien.

"(iv) APPLICATION.—A loan guarantee under this subsection on behalf of a small business concern, which is approved within 120 days of the date on which a nonguaranteed loan is obtained by the same small business concern, shall be subject to the provisions of this paragraph.

"(C) FEE ON COMBINATION LOAN.—The lender of the nonguaranteed loan shall pay a one-time fee of 0.5 percent of the amount of the nonguaranteed loan if the nonguaranteed portion of the loan has a senior credit position to the guaranteed portion of the loan. This fee shall be in addition to any other lender fees and shall not be charged to the borrower.

"(D) LOAN SIZE.—

"(i) PREFERRED LENDERS PROGRAM.—If the loan guaranteed under this subsection is processed under delegated authority under the Preferred Lenders Program, the maximum amount of the nonguaranteed loan may not exceed—

"(1) $1,000,000; or

"(II) a combination of $2,000,000 gross loan amount of a loan guaranteed by the Administration and an additional nonguaranteed loan of $1,000,000.

"(ii) SMALL BUSINESS ADMINISTRATION.—If the loan guaranteed under this subsection is processed and approved by Administration staff, the amount of the nonguaranteed loan may not exceed—

"(I) $2,000,000; or

"(II) a combination of $2,000,000 gross loan amount of a loan guaranteed by the Administration and an additional nonguaranteed loan of $2,000,000.

"(E) USE OF PROCEEDS.—All proceeds from the fee collected under this subparagraph shall be used to offset the cost (as defined in section 502 of the Credit Reform Act of 1990) to the Administration of guaranteeing loans under this subsection.".

(b) TERMINATION OF LENDER AUTHORITY TO RETAIN GUARANTEE FEES.—Section 7(a)(18)(B) of the

1 Small Business Act (15 U.S.C. 636(a)(18)(B)) is amend-
2 ed to read as follows:

3 "(B) RETENTION OF CERTAIN FEES.—

4 "(i) IN GENERAL.—Except as pro-
5 vided under clause (ii), lenders partici-
6 pating in the programs established under
7 this subsection may retain not more than
8 25 percent of a fee collected under sub-
9 paragraph (A)(i).

10 "(ii) FISCAL YEAR 2004.—Beginning
11 on the date of enactment of this clause and
12 ending on September 30, 2004, the Admin-
13 istration or its agent shall collect all fees
14 under subparagraph (A)(i). All proceeds
15 from fees collected under this paragraph
16 shall be used to offset the cost (as defined
17 in section 502 of the Credit Reform Act of
18 1990) to the Small Business Administra-
19 tion of guaranteeing loans under this sub-
20 section.".

21 (c) TEMPORARY MODIFICATION OF ANNUAL LENDER
22 FEE.—Section 7(a)(23) of the Small Business Act (15
23 U.S.C. 636(a)) is amended—

24 (1) by striking "0.25 percent" and inserting
25 "0.35 percent"; and

1 (2) by adding at the end the following: "All
2 proceeds from the fee collected under this paragraph
3 shall be used to offset the cost (as defined in section
4 502 of the Credit Reform Act of 1990) to the Ad-
5 ministration of guaranteeing loans under this sub-
6 section.".

7 (d) LIFTING LOAN RESTRICTIONS AND PRIORITY
8 PROCESSING OF REJECTED APPLICATIONS.

9 (1) IN GENERAL.—The Small Business Admin-
10 istration shall—

11 (A) eliminate the program restrictions im-
12 posed by policy notices 5000–902 and 0000–
13 1709 to allow for the processing and approval
14 of loan applications cancelled or returned be-
15 cause of the program shutdown or restrictions
16 imposed by policy notices 5000–902, 0000–
17 1707, or 0000–1709;

18 (B) permit a small business or lender to
19 resubmit any loan application that was not con-
20 sidered or approved because of the program
21 shutdown or restrictions imposed by policy no-
22 tices 5000–902, 0000 1707, or 0000 1709;

23 (C) give priority to processing any applica-
24 tion submitted before January 8, 2004, that
25 was not considered because of the program

shutdown or loan restrictions imposed by policy notices 5000–902, 0000–1707, or 0000–1709;

(D) give priority, to the extent possible, to approving all eligible loans that were cancelled or returned because of the program shutdown or restrictions imposed by policy notices 5000–902, 0000–1707, or 0000–1709, in the order in which the applications were originally submitted; and

(E) give priority to processing all eligible loans to any small business that has received financing under section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14) and requests a renewal of such financing, regardless of temporary restrictions imposed by the Small Business Administration through the policy notices referred to in this paragraph, and approve such loans, if the small business is otherwise eligible for such financing under that section.

(2) PROOF OF APPLICATION.—An application shall not be denied consideration or approval because the Small Business Administration failed to retain a record of receiving an application if the lender or borrower supplies proof that the applica-

1 tion was submitted by mail, fax, or electronic means
2 before January 8, 2004.
3 (3) RESERVATION AND APPLICATION OF FEE
4 PROCEEDS.—All proceeds from fees authorized
5 under section 7(a) of the Small Business Act (15
6 U.S.C. 636(a)) shall be combined with any amounts
7 appropriated to carry out such section and used—
8 (A) first, to process and fund loan guaran-
9 tees approved pursuant to paragraph (d)(1);
10 and
11 (B) second, to process and fund other loan
12 guarantees under section 7(a) of the Small
13 Business Act.
14 (4) NOTIFICATION REQUIREMENT.—The Small
15 Business Administration shall not make any signifi-
16 cant policy or administrative changes affecting the
17 operation of the loan program authorized under sec-
18 tion 7(a) of the Small Business Act (15 U.S.C.
19 636(a)) unless, not later than 15 business days be-
20 fore such change, the Administrator of the Small
21 Business Administration submits, under the Admin-
22 istrator's signature, a report that specifically de-
23 scribes the proposed changes and the duration of
24 those changes to—

1 (A) the chairman and ranking member of
2 the Committee on Small Business and Entre-
3 preneurship of the Senate; and
4 (B) the chairman and ranking member of
5 the Committee on Small Business of the House
6 of Representatives.
7 (e) SUNSET DATE.—This section and the amend-
8 ments made by this section are repealed on October 1,
9 2004.

10 **SEC. 5. RESUBMISSION OF DISASTER LOAN APPLICATIONS**
11 **FOR CERTAIN BUSINESSES.**

12 (a) RESUBMISSION OF APPLICATIONS.—During the
13 30-day period beginning on the date of enactment of this
14 Act, a small business concern may resubmit an application
15 for a loan that was not approved under section 7(b)(2)
16 of the Small Business Act (15 U.S.C. 636(b)(2)) if the
17 following conditions are met:
18 (1) ORIGINAL APPLICATION.—The small busi-
19 ness concern originally submitted an application be-
20 fore January 1, 2003, in response to the events as-
21 sociated with Small Business Administration Dis-
22 aster Declaration 3364.
23 (2) LOCATION.—On the date of the original
24 submission of the application and on the date of the
25 resubmission, the applicant operates a facility in

1 Bronx, Kings, Nassau, New York, Queens, Rich-
2 mond, or Westchester county in the State of New
3 York.

4 (3) INABILITY TO OPERATE.—Without regard
5 to physical damage to a facility, the applicant was
6 unable to operate at a facility because of a prohibi-
7 tion on the use of the facility, in whole or in part,
8 by an order or other action of a Federal, State, or
9 local government (or any instrumentality of any of
10 the foregoing) for 20 or more consecutive days, oc-
11 curring as a result of the events associated with
12 Small Business Administration Disaster Declaration
13 3364.

14 (b) STANDARD FOR APPROVAL.—The Administrator
15 shall approve (without regard to any requirements applica-
16 ble under section 7(b) of the Small Business Act (15
17 U.S.C. 636(b))), a loan with respect to any application
18 resubmitted under subsection (a) if the applicant has a
19 debt coverage ratio, as attested to by a qualified, inde-
20 pendent, third-party auditor, of not less than 1.15 for the
21 applicant's last taxable year ending before the date of the
22 submission of the original application. For purposes of de-
23 termining the debt coverage ratio under this subsection,
24 the Administrator shall not take into account any Federal
25 or State tax lien or obligation other than a judgment lien.

1 (c) MINIMUM LOAN AMOUNT.—The Administrator
2 shall not approve a loan under this section for an amount
3 that is less than 80 percent of the documented losses
4 shown on the application submitted under subsection (a).
5 (d) COORDINATION WITH OTHER LOAN LIMITS.—No
6 loan made under this section shall be taken into account
7 under section 7(b)(3)(E) of the Small Business Act (15
8 U.S.C. 636(b)(3)(E)).