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6 ATTORNEYS FOR ALL PLAINTIFFS

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 DEJA VU-SAN FRANCISCO, LLC; BIJOU-
CENTURY, LLC; SAN FRANCISCO
13 GARDEN OF EDEN, LLC; DEJA VU
SHOWGIRLS OF SAN FRANCISCO, LLC;
14 GOLD CLUB-SF, LLC; DEJA VU
COLORADO SPRINGS, INC.; ROUGE
15 PORTLAND, LLC; DEJA VU SPOKANE,
INC.; DREAMGIRLS OF LAKE CITY, LLC;
16 DEJA VU SEATTLE, LLC; DEJA VU LAKE
CITY, INC.; DREAMGIRLS OF TACOMA,
17 LLC; DREAMGIRLS OF SEATTLE, LLC;
SAW ENTERTAINMENT, LTD; AND BT
18 CALIFORNIA, LLC,

19 Plaintiffs,

20 v.

21 UNITED STATES SMALL BUSINESS
ADMINISTRATION; JOVITA CARRANZA,
22 ADMINISTRATOR OF THE SMALL
BUSINESS ADMINISTRATION, IN HER
OFFICIAL CAPACITY; AND THE UNITED
23 STATES OF AMERICA,
Defendants.

24 Defendants.
25

Case No. 3:20-cv-03982

**DECLARATION OF MATTHEW HOFFER
IN SUPPORT OF PLAINTIFFS' EX PARTE
APPLICATION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

1 1. I, Matthew J. Hoffer, hereby declare as follows:

2 2. I make this declaration upon my personal knowledge, unless specifically stated to
3 the contrary.

4 3. I am an attorney licensed to practice in the State of Michigan employed by Shafer
5 & Associates, P.C. I have been admitted pro hac vice as Plaintiffs' counsel in this action.

6 4. This declaration is provided in support of Plaintiffs' Ex Parte Application for
7 Leave to File Supplemental Brief, which seeks to submit additional briefing and materials in
8 support of Plaintiffs' pending motion for a preliminary injunction.

9 5. The supplemental brief addresses 15 U.S.C. 633(e) and the legislative history
10 relating thereto as it in turn relates to Plaintiffs arguments that the challenged Regulation is
11 invalid under Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc. ("Chevron"), 467 U.S. 837,
12 842 (1984) and progeny.

13 6. Shafer & Associates, P.C. and its attorneys Bradley J. Shafer, Matthew J. Hoffer
14 and Zachary M. Youngsma are also plaintiffs' counsel in a similar case pending in the Eastern
15 District of Michigan challenging exclusions applied by the SBA in context of the Payroll
16 Protection Program provisions of the CARES Act. In reviewing materials from that case in
17 preparation for the July 30, 2020 hearing in this case, 15 U.S.C. 633(e) caught Mr. Shafer's
18 attention. Additional research into that provision and its legislative history by the attorneys at
19 Shafer & Associates, P.C. on July 29, 2020 uncovered the issues addressed in the proposed
20 supplemental brief. It was our conclusion that these issues were important to the matters at hand
21 and needed to be raised at the hearing. Given that the matters would be raised at the hearing, it
22 was determined that notice of the same should be provided to the Court and opposing counsel,
23 and work to assemble the supplemental brief began.

24 7. Both this case and in the related matter in the Eastern District of Michigan are
25 being litigated on an emergency basis and involve the recently-enacted CARES Act modifications
26 to the Small Business Act, 15 U.S.C. § 631 *et sec.* Moreover, the Small Business Act itself is
27 complex and voluminous and is accompanied by additionally complex and voluminous
28 administrative regulations.

1 8. In addition and as Defendants have pointed out, the exclusion at issue relating to
2 “prurience” exclusion to SBA assistance in its various programs has not previously been litigated.
3 These are issues of first impression being litigated on an emergency basis. These issues are being
4 litigated among complicated constitutional issues.

5 9. Before today, Counsels for Plaintiffs had not previously identified the issues
6 addressed in the proposed supplemental brief. Counsels have not deferred raising these issues to
7 gain an unfair advantage and do not seek to file the supplemental brief for any improper purpose.

8 10. The proposed supplemental brief is attached hereto as **Exhibit 1**.

9 11. My additional declaration authenticating and attaching the materials supporting the
10 proposed supplemental brief are attached as **Exhibit 2**.

11 I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED
12 STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

13
14 Date: July 29, 2020

/s/ Matthew J. Hoffer

MATTHEW J. HOFFER

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16
17
18 4850-6246-3941, v. 1

EXHIBIT 1

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23 STATES OF AMERICA,
Defendants.

24 Defendants.

Case No. 3:20-cv-03982

**PLAINTIFFS' [PROPOSED]
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
PURSUANT TO CIVIL L.R. 65-1**

Date: July 30, 2020
Time: 9:30 a.m.
Courtroom: B – 15th Floor
Judge: Hon. Magistrate Laurel Beeler

CASE NO. 3:20-CV-03982

**PLAINTIFFS' [PROPOSED] SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR TRO AND PRELIM. INJUNCTION**

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**INDEX OF EXHIBITS ATTACHED TO THE SECOND DECLARATION OF
MATTHEW J. HOFFER**

- Exhibit A** S. 2060 Engrossed in Senate, 103D Congress, 2d Session (August 18, 1994) (abridged)
- Exhibit B** S. REP. 103-332, 1994 U.S.C.C.A.N. 3407 (abridged)
- Exhibit C** S. 2060 Engrossed Amendment House, 103D Congress, 2d Session (September 21, 1994) (abridged)
- Exhibit D** H.R. CONF. REP. 103-824, 1994 U.S.C.C.A.N. 3436 (abridged)

1 As part of Plaintiffs’ “Preliminary Injunction Motion,” Plaintiffs assert that the challenged
 2 Regulation (13 C.F.R. § 123.201(f)) is invalid under Chevron, U.S.A., Inc. v. Nat. Res. Def.
 3 Council, Inc. (“Chevron”), 467 U.S. 837, 842 (1984) and its progeny because the Small Business
 4 Act, 15 U.S.C. § 631 *et seq.*, as modified by the CARES Act, is unambiguous as to what entities
 5 qualify for EIDL assistance and because the Regulation is not the product of reasoned decision-
 6 making. (*See* dkt. 33, pp. 11-16).

7 As Plaintiffs’ counsel has further prepared for the hearing of this matter, it now appears
 8 the Plaintiffs were remiss in failing to identify and discuss the impact of 15 U.S.C. § 633(e) and
 9 the legislative history relating thereto, which directly addresses the type of products and services
 10 that would disqualify an entity from receiving Small Business Administration assistance. In its
 11 entirety, 15 U.S.C. § 633(e) reads:

12 (e)PROHIBITION ON PROVISION OF ASSISTANCE

13 Notwithstanding any other provision of law, the Administration is prohibited from
 14 providing any financial or other assistance to any business concern or other
 15 person engaged in the production or distribution of any product or service that has
 been determined to be obscene by a court of competent jurisdiction.

16 This provision was first included in the Code on October 22, 1994 via Pub. L. 103-403.
 17 Thereafter, the SBA promulgated the first proposed rule containing a “prurience” requirement.
 18 Business Loan Program, 60 Fed. Reg. 63456, *et seq.* (proposed Dec. 15, 1995) (to be codified at
 19 13 C.F.R. § 120.110(p)). This proposed rule was adopted on January 31, 1996. Business Loan
 20 Program, 61 Fed. Reg. 3226, *et seq.* (Jan 31. 1996). Two years later, the SBA promulgated the
 21 proposed rule bringing the Disaster Loans’ regulations in accord with the Business Loan
 22 Program. Disaster Loan Program, 63 Fed. Reg. 20140 (proposed Apr. 23, 1998) (to be codified at
 23 13 C.F.R. § 123.201(f)). The SBA adopted this proposed rule a few months later. Disaster Loan
 24 Program, 63 Fed. Reg. 46643 (Sept. 2, 1998).

25 The final engrossed Senate version of this provision in what would be Pub. L. 103-403
 26 and codified at 15 U.S.C. § 633(e) stated:

27 (e) PROHIBITION ON THE PROVISION OF ASSISTANCE.—Notwithstanding
 28 any other provision of law, the Administration is prohibited from providing any

1 financial or other assistance to any business concern or other person engaged in the
2 production or distribution of any product or service *that is determined to be*
3 *obscene*.

4 S. 2060 Engrossed in Senate, 103D Congress, 2d Session (August 18, 1994) (emphasis added).

5 (**Exhibit A** to Second Declaration of Matthew J. Hoffer, Esq. (“2d Hoffer Dec.”)).

6 The related Senate Report, at Section 612, explained:

7 During Committee markup of the bill, Senator Pressler offered an amendment, that
8 was unanimously accepted by the Committee, to prohibit the Administration from
9 providing assistance to businesses engaged in the production and distribution of
10 obscene products or services. The amendment was offered in response to the
11 Administration's recent repeal of its “opinion molder rule” promulgated in 1953.
12 Under that rule, the Administration, with few exceptions, could not provide
13 assistance to small businesses engaged in the “creation, origination, expression,
14 dissemination, propagation or distribution of ideas, values, thought, opinions or
15 similar intellectual property, regardless of medium, form, or content” (13 CFR
16 120.101–2(b)). With the repeal of the rule, businesses such as newspapers, movie
17 theaters, radio stations and bookstores now are eligible for Administration
18 assistance. However, members of the Committee were concerned a blanket repeal
19 of the rule would allow businesses involved in the production and distribution of
20 obscene products and services to seek Administration support and that the agency
21 would have no means by which to deny such loans or other assistance. Senator
22 Pressler's amendment makes it clear the Administration is not authorized to
23 provide any assistance to those engaged in “obscene” businesses (and thus not
24 entitled to First Amendment protection) as defined by the U.S. Supreme Court.
25 The amendment is intended to cover the narrow range of adult theme businesses,
26 including adult book stores, adult theaters, adult film and video producers, and
27 adult film and video distributors. It is not meant to apply to businesses such as
28 convenience stores that may carry adult materials that do not fall within the
Supreme Court's definition of obscenity.

S. REP. 103-332, 23-24, 1994 U.S.C.C.A.N. 3407, 3430-31 (**Exhibit B** to 2d Hoffer Dec.).

22 The House Bill modified this language to the form ultimately codified as 15 U.S.C. §
23 633(e) as set forth above. (See S. 2060 Engrossed Amendment House, 103D Congress, 2d
24 Session (September 21, 1994), attached as **Exhibit C** to 2d Hoffer Dec.).

25 The U.S. House of Representatives explained their reasoning for the amendment as
26 follows:

27 The Senate bill prohibits the Administration from providing assistance to
28 businesses engaged in the production and distribution of obscene products and

1 services. This section was written in response to the recent repeal of SBA's
 2 “opinion molder rule”. With the repeal of the rule, businesses such as newspapers,
 3 movie theaters, radio stations and bookstores now are eligible for SBA assistance.
 4 This means businesses involved in the production and distribution of obscene
 5 products and services also could seek Administration support. This section makes
 6 clear that the Administration is not authorized to provide any assistance to those
 7 engaged in any class of “obscene” business as defined by the U.S. Supreme Court
 8 (and thus not entitled to First Amendment protection). The section is intended to
 9 cover the narrow range of adult theme businesses, including adult book stores,
 10 adult theaters, adult film and video producers, and adult film and video
 11 distributors. It is not meant to apply to businesses such as convenience stores
 12 carrying adult materials that do not fall within the Supreme Court's definition of
 13 obscenity.

14 The House bill had no similar provision

15 The conferees adopted the Senate provision with the clarification that *any*
 16 *materials in question must have been judicially determined, in either a civil or*
 17 *criminal action, to be legally obscene under the prevailing constitutional*
 18 *standards in order for the ban to apply.*

19 H.R. CONF. REP. 103-824, 54, 1994 U.S.C.C.A.N. 3436, 3455 (Section 611, emphasis added)

20 (**Exhibit D** to 2d Hoffer Dec.).

21 Thus, Congress has directly spoken to the issue of what type of ‘erotic’ businesses may be
 22 excluded. Notably, men’s clubs are not even among the categories of “adult” businesses
 23 delineated in the Senate version. More importantly, the House report explains that the final
 24 language raises the bar even further by requiring the materials to be “judicially determined” to be
 25 legally obscene. By excluding, as the Regulation does, businesses that offer or derive income
 26 from performances or products of a “prurient sexual nature,” the regulation is contrary to 15
 27 U.S.C. 633(e) in two distinct ways. First, it changes the decision maker from a court of
 28 competent jurisdiction to an SBA administrator. Second, it lowers the standard from legally
 obscene to “prurient sexual nature.” As Plaintiffs have explained, prurience is but one part of one
 prong of the three-part obscenity test set forth in Miller v. California, 413 U.S. 15 (1973).
 Therefore, the Regulation fails step one of the Chevron analysis.

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CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that this Honorable Court grant the motion and order the relief originally requested.

Respectfully submitted,

Dated: July 29, 2020

LONG & LEVIT LLP

By: /s/ Douglas J. Melton

DOUGLAS J. MELTON
SHANE M. CAHILL
Attorneys for Plaintiffs Deja Vu-San Francisco, LLC; Bijou-Century, LLC; San Francisco Garden of Eden, LLC; Deja Vu Showgirls of San Francisco, LLC; Gold Club-SF, LLC; Deja Vu Colorado Springs, Inc.; Rouge Portland, LLC; Deja Vu Spokane, Inc.; Dreamgirls of Lake City, LLC; Deja Vu Seattle, LLC; Deja Vu Lake City, Inc.; Dreamgirls of Tacoma, LLC; and Dreamgirls of Seattle, LLC.

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By: /s/ Matthew J. Hoffer

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CERTIFICATE OF SERVICE

I certify that on July 29, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/ Douglas J. Melton

4841-4699-0533, v. 1

EXHIBIT 2

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Case No. 3:20-cv-03982

**SECOND DECLARATION OF MATTHEW
HOFFER IN SUPPORT OF PLAINTIFFS'
SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' EMERGENCY MOTION
FOR ENTRY OF A TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

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28

1 1. I, Matthew J. Hoffer, hereby declare as follows:

2 2. I make this declaration upon my personal knowledge, unless specifically stated to
3 the contrary.

4 3. I am an attorney licensed to practice in the State of Michigan employed by Shafer
5 & Associates, P.C. I have been admitted pro hac vice as Plaintiffs' counsel in this action.

6 4. Attached hereto as **Exhibit A** is a true and accurate abridged copy of United States
7 Senate Bill 2060 as and engrossed in the Senate on August 18, 1994 in the 103d Congress, 2d
8 Session. This document was obtained from [https://www.congress.gov/103/bills/s2060/BILLS-](https://www.congress.gov/103/bills/s2060/BILLS-103s2060es.pdf)
9 [103s2060es.pdf](https://www.congress.gov/103/bills/s2060/BILLS-103s2060es.pdf).

10 5. Attached hereto as **Exhibit B** is a true and accurate abridged copy of United States
11 Senate Report 103-332, 1994 U.S.C.C.A.N. 3407, as supplied by Westlaw.

12 6. Attached hereto as **Exhibit C** is a true and accurate abridged copy of United States
13 Senate Bill as ultimately enrolled by the 103d Congress, 2d Session. This document was obtained
14 from <https://www.congress.gov/103/bills/s2060/BILLS-103s2060enr.pdf>

15 7. Attached hereto as **Exhibit D** is a true and accurate abridged copy of the United
16 States House of Representatives Report 103-824, 1994 U.S.C.C.A.N. 3436, as supplied by
17 Westlaw.

18 I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED
19 STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

20
21 Date: July 29, 2020

/s/ Matthew J. Hoffer

22 MATTHEW J. HOFFER
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EXHIBIT A

103RD CONGRESS
2^D SESSION

S. 2060

AN ACT

To amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

103^D CONGRESS
2^D SESSION

S. 2060

AN ACT

To amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Small Business Administration Reauthorization and
6 Amendment Act of 1994”.

1 **SEC. 611. OFFICE OF ADVOCACY EMPLOYEES.**

2 Section 204 of Public Law 94–305 (15 U.S.C. 634d)
3 is amended—

4 (1) in the matter preceding paragraph (1) by
5 striking “after consultation with and subject to the
6 approval of the Administrator,”; and

7 (2) in paragraph (1), by striking “ten” and in-
8 serting “14”.

9 **SEC. 612. PROHIBITION ON THE PROVISION OF ASSIST-**
10 **ANCE.**

11 Section 4 of the Small Business Act (15 U.S.C. 633)
12 is amended by adding at the end the following new sub-
13 section:

14 “(e) PROHIBITION ON THE PROVISION OF ASSIST-
15 ANCE.—Notwithstanding any other provision of law, the
16 Administration is prohibited from providing any financial
17 or other assistance to any business concern or other per-
18 son engaged in the production or distribution of any prod-
19 uct or service that is determined to be obscene.”.

20 **SEC. 613. CERTIFICATION OF COMPLIANCE WITH CHILD**
21 **SUPPORT OBLIGATIONS.**

22 Section 4 of the Small Business Act (15 U.S.C. 633),
23 as amended by section 612, is amended by adding at the
24 end the following new subsection:

25 “(f) CERTIFICATION OF COMPLIANCE WITH CHILD
26 SUPPORT OBLIGATIONS.—

EXHIBIT B

S. REP. 103-332, S. Rep. No. 332, 103RD Cong., 2ND Sess.
1994, 1994 WL 440352, 1994 U.S.C.A.N. 3407 (Leg.Hist.)
P.L. 103-403, **3407 *1 SMALL BUSINESS ADMINISTRATION
REAUTHORIZATION AND AMENDMENTS ACT OF 1994

AMENDING THE SMALL BUSINESS ACT, THE SMALL
BUSINESS INVESTMENT ACT, AND FOR OTHER PURPOSES

DATES OF CONSIDERATION AND PASSAGE

Senate: August 18, October 5, 1994
House: September 21, October 4, 1994
Cong. Record Vol. 140 (1994)
Senate Report (Small Business Committee) No. 103-332,
Aug. 10, 1994 (To accompany S. 2060)
House Report (Small Business Committee) No. 103-616,
July 21, 1994 (To accompany H.R. 4801)
House Conference Report No. 103-824,
Oct. 3, 1994 (To accompany S. 2060)

SENATE REPORT NO. 103-332

August 10, 1994
[To accompany S. 2060]

The Committee on Small Business, to which was referred the bill (S. 2060) having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

CONTENTS

	Page
Introduction.....	1
Title I—Authorizations.....	2
Sec. 7(a) Business loans.....	4
Direct lending.....	5
Sec. 504 Development company loans.....	6
SBIC Debentures and participating securities.....	7
Business development programs.....	7
Title II—Financial assistance programs.....	8
Microloan demonstration program.....	8
Export assistance loan program.....	11

This authority was enacted as part of the Small Business Research and Development Enhancement Act of 1992, Public Law 102-564. It has not worked as well as expected because the original legislation limited the term of the contracts to one year. The contracting process with most federal agencies is so time-consuming, often lasting many months, that agencies have found it impractical to hire a service-provider for this purpose only to repeat the contracting process a few months later. Therefore, the Committee has included this change.

Sec. 609

This section extends for one year the existing authority for firms participating in the SBA Minority Business Program known as the Sec. 8(a) program to enter into joint ventures with Native American tribes and tribal entities. Without this extension, this authority would expire on September 30, 1994.

Sec. 610

This section prohibits SBA from knowingly assisting individuals who are illegal aliens.

Sec. 611

This section modifies the authority of the Chief Counsel for Advocacy to hire the employees provided for under 15 USC 634d by deleting the requirement that the Chief Counsel obtain the approval of the Administrator. Additionally, the section provides that not more than 14 staff personnel at any one time may be compensated at a rate not in excess of GS-15, step 10, of the General Schedule. This change simply represents an increase in the current ceiling on personnel hired under this provision from ten to fourteen.

Sec. 612

During Committee markup of the bill, Senator Pressler offered an amendment, that was unanimously accepted by the Committee, to prohibit the Administration from providing assistance to businesses engaged in the production and distribution of obscene products or services. The amendment was offered in response to the Administration's recent repeal of its "opinion molder rule" promulgated in 1953. Under that rule, the Administration, with few exceptions, could not provide assistance to small businesses engaged in the "creation, origination, expression, dissemination, propagation or distribution of ideas, values, thought, opinions or similar intellectual ****3431 *24** property, regardless of medium, form, or content" (13 CFR 120.101-2(b)). With the repeal of the rule, businesses such as newspapers, movie theaters, radio stations and bookstores now are eligible for Administration assistance. However, members of the Committee were concerned a blanket repeal of the rule would allow businesses involved in the production and distribution of obscene products and services to seek Administration support and that the agency would have no means by which to deny such loans or other assistance. Senator Pressler's amendment makes it clear the Administration is not authorized to provide any assistance to those engaged in "obscene" businesses (and thus not entitled to First Amendment protection) as defined by the U.S. Supreme Court. The amendment is intended to cover the narrow range of adult theme businesses, including adult book stores, adult theaters, adult film and video producers, and adult film and video distributors. It is not meant to apply to businesses such as convenience stores that may carry adult materials that do not fall within the Supreme Court's definition of obscenity.

Sec. 613

At the mark-up of S. 2060, the Committee adopted an amendment offered by Senator Moseley-Braun on behalf of Senator Lautenberg which requires every applicant for SBA financial assistance to certify in writing that he or she is not in violation of

EXHIBIT C

S. 2060

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To amend the Small Business Act and the Small Business Investment Act of 1958, 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; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Small Business Administration Reauthorization and Amendments Act of 1994”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorizations.

TITLE II—FINANCIAL ASSISTANCE PROGRAMS

Sec. 201. Microloan financing pilot.

Sec. 202. Eligibility of Native American Tribal Governments to be microloan intermediaries.

Sec. 203. Microloan program extension.

Sec. 204. Microloan program funding and State limitations.

Sec. 205. Distribution of intermediaries.

Sec. 206. Microloan intermediary loan limitation.

Sec. 207. Microloan technical assistance to nonborrowers.

Sec. 208. Microloan technical assistance grants for intermediaries serving economically distressed areas.

Sec. 209. Loans to exporters.

Sec. 210. Working capital international trade loans.

Sec. 211. Guarantees on international trade loans.

Sec. 212. Accredited lenders program.

Sec. 213. Interest rate on certified development company loans.

Sec. 214. Certifications of eligibility for SBIC and SSBIC financing.

Sec. 215. Participating securities for smaller SBICs.

Sec. 216. Report on SBIC program.

Sec. 217. Premier Certified Lenders Program.

TITLE III—SIZE STANDARDS AND BOND GUARANTEES

Sec. 301. Establishment of size standards.

Sec. 302. Pilot preferred surety bond guarantee program extension.

Sec. 303. Manufacturing contracts through manufacturing application and education centers.

Sec. 304. Pilot program for very small business concerns.

Sec. 305. Handicapped workshop participation in small business set aside contracts.

TITLE IV—BUSINESS DEVELOPMENT ASSISTANCE

Subtitle A—General Provisions

Sec. 401. Sunset on cosponsored training.

Sec. 402. Small business development center program level.

Sec. 403. Federal contracts with small business development centers.

S. 2060—30

(c) **CONTRACTING WITH INDEPENDENT ENTITIES.**—In carrying out subsections (a) and (b), the Administration may contract with an independent entity or entities—

- (1) to conduct the study pursuant to subsection (a); and
- (2) to develop a database of information to enable the Administration to maintain and access, on an ongoing basis, current information relating to the factors set forth in subsection (b).

(d) **DATE.**—The study authorized by subsection (a) shall be completed not later than September 30, 1995.

SEC. 607. SBIR VENDORS.

Section 9(q)(2) of the Small Business Act (15 U.S.C. 638(q)(2)) is amended to read as follows:

“(2) **VENDOR SELECTION.**—Each agency may select a vendor to assist small business concerns to meet the goals listed in paragraph (1) for a term not to exceed 3 years. Such selection shall be competitive and shall utilize merit-based criteria.”.

SEC. 608. PROGRAM EXTENSION.

Section 602(e) of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 637 note) is amended by striking “September 30, 1994”, and inserting “September 30, 1997”.

SEC. 609. PROHIBITION ON THE USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end the following new subsection:

“(i) **PROHIBITION ON THE USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES.**—None of the funds made available pursuant to this Act may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.”.

SEC. 610. OFFICE OF ADVOCACY EMPLOYEES.

Section 204 of Public Law 94–305 (15 U.S.C. 634d) is amended—

- (1) in the matter preceding paragraph (1), by striking “after consultation with and subject to the approval of the Administrator,”; and
- (2) in paragraph (1), by striking “ten” and inserting “14”.

SEC. 611. PROHIBITION ON THE PROVISION OF ASSISTANCE.

Section 4 of the Small Business Act (15 U.S.C. 633) is amended by adding at the end the following new subsection:

“(e) **PROHIBITION ON THE PROVISION OF ASSISTANCE.**—Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.”.

SEC. 612. CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.

Section 4 of the Small Business Act (15 U.S.C. 633), as amended by section 611, is amended by adding at the end the following new subsection:

EXHIBIT D

H.R. CONF. REP. 103-824, H.R. Conf. Rep. No. 824, 103RD Cong.,
2ND Sess. 1994, 1994 WL 542750, 1994 U.S.C.A.N. 3436 (Leg.Hist.)

*1 P.L. 103-403, SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1994

****3436 SMALL BUSINESS ADMINISTRATION REAUTHORIZATION**

DATES OF CONSIDERATION AND PASSAGE

Senate: August 18, October 5, 1994
House: September 21, October 4, 1994
Cong. Record Vol. 140 (1994)
Senate Report (Small Business Committee) No. 103-332,
Aug. 10, 1994 (To accompany S. 2060)
House Report (Small Business Committee) No. 103-616,
July 21, 1994 (To accompany H.R. 4801)
House Conference Report No. 103-824,
Oct. 3, 1994 (To accompany S. 2060)

HOUSE CONFERENCE REPORT NO. 103-824

October 3, 1994
[To accompany S. 2060]

****0 CONFERENCE REPORT (H. REPT. 103-824)**

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2060), to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Small Business Administration Reauthorization and Amendments Act of 1994”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorizations.

Congress, the President and the public need to know whether these programs represent sound investments of the taxpayers' dollars in terms of jobs created or retained and taxes paid by firms receiving SBA assistance. SBA is urged to complete this report in the most timely fashion possible consistent with quality and reliability of data. Outside contractors may be used as needed, as well as in-house resources of the Office of Advocacy or other government agencies.

The Conferees wish to make clear that as to factor number eight (Sec. 606(b)(8)), "taxes paid by businesses which received the loans or financings under each program", the Conferees expect, to the greatest extent practicable, that the Administration will include within the definition of "taxes paid," all applicable Federal taxes withheld by a business on behalf of its employees. In other words, the phrase "taxes paid by businesses" is to include, if such figures are easily obtainable, taxes owed by individuals employed by such businesses as the result of their employment.

Sec. 607. SBIR vendors

The Senate bill contained a provision that extended from one year to three years the maximum term for contracts under which private sector vendors provide technical assistance to recipients of awards under the Small Business Innovation Research (SBIR) Program, pursuant to section 9(q) of the Small Business Act.

The House amendment (Sec. 608) contained an identical provision.

The Conference Agreement includes this provision.

****3455 *54** Sec. 608. Program extension

The Senate bill extended the authority of Native American tribes to enter into joint ventures with firms certified under the Sec. 8(a) program, a business development program for firms owned by socially or economically disadvantaged individuals. The House bill contained no similar provision. The conferees adopted a provision extending the current joint venture authority for three years.

Sec. 609. Prohibition on the use of funds for individuals not lawfully within the United States

Both bills and the conference agreement prohibited SBA financial assistance to individuals who are known by SBA to be illegal aliens.

Sec. 610. Office of Advocacy Employees

The Senate bill modifies the authority of the Chief Counsel for Advocacy to hire the employees provided for under 15 U.S.C. 634d by eliminating the requirement that the Chief Counsel obtain the approval of the SBA Administrator. In addition, the Senate bill provided the Chief Counsel an increase of four employees in the personnel ceiling of the Office of Advocacy. Such employees are to be compensated at a rate not in excess of GS-15, step 10.

The House amendment contained a similar provision and receded to the Senate provision.

Sec. 611. Prohibition on the provision of assistance

The Senate bill prohibits the Administration from providing assistance to businesses engaged in the production and distribution of obscene products and services. This section was written in response to the recent repeal of SBA's "opinion molder rule". With the repeal of the rule, businesses such as newspapers, movie theaters, radio stations and bookstores now

are eligible for SBA assistance. This means businesses involved in the production and distribution of obscene products and services also could seek Administration support. This section makes clear that the Administration is not authorized to provide any assistance to those engaged in any class of “obscene” business as defined by the U.S. Supreme Court (and thus not entitled to First Amendment protection). The section is intended to cover the narrow range of adult theme businesses, including adult book stores, adult theaters, adult film and video producers, and adult film and video distributors. It is not meant to apply to businesses such as convenience stores carrying adult materials that do not fall within the Supreme Court's definition of obscenity.

The House bill had no similar provision.

The conferees adopted the Senate provision with a clarification that any materials in question must have been judicially determined, in either a civil or criminal action, to be legally obscene under prevailing constitutional standards in order for the ban to apply.

****3456 *55** Sec. 612. Certification of compliance with child support obligations

Both bills contained provisions requiring SBA borrowers to certify that they are not in violation of any court order or agreement requiring the payment of child support. The conference report contains the same provision with a clarification that the prohibition refers to a substantial non-compliance with court orders, administrative orders, or agreements, specifically 60 days or more in arrears.

While intending to strengthen federal policy in support of family support obligations, the conferees recognize that economic circumstances may from time to time cause a parent to be late in such payments. It is not the intent of the conferees to subject minor lapses to the severe criminal and civil penalties contained in both the Small Business Act and the False Statements Act for false representations made to the agency in the course of a loan application or other application for assistance. Hence, the conference agreement provides for a certification that the applicant is not more than 60 days late in making any child support payment required by court order or agreement. Loan applicants should be advised of this provision at the outset of the application process, but certification pursuant to this section may be made as part of the loan closing.

Sec. 613. Advocacy study of paperwork and tax impact

The House amendment contained a provision (sec. 708) that would require the Chief Counsel for Advocacy of the Small Business Administration (SBA) to conduct a comprehensive study of the impact of all Federal regulatory, paperwork and tax requirements on small business. State and local regulations, paperwork or tax burdens are not within the scope of this study.

Under this provision, the Chief Counsel for Advocacy must report the findings of this comprehensive study to Congress within one year of the enactment of this provision. One of the primary responsibilities of the Office of Advocacy of the SBA is to interface with all Federal regulatory agencies during the rulemaking process. Another responsibility of the Office of Advocacy is to serve as an Ombudsman for the interests of small business throughout the Federal government. The study required by the provision will greatly assist the Office of Advocacy in fulfilling its mission.

The Senate bill contained no similar provision, and receded to the House amendment.

John J. LaFalce,
Neal Smith,
Ron Wyden,
Jan Meyers,
Richard H. Baker,
Managers on the part of the House.