

Appendix E

Guaranty Loan Program **Model Legislation**

APPENDIX E

Model Legislation for Guaranty Loan Program

Note: For the purposes of this model legislation, we have used the following titles as they relate to the formation of a small and medium enterprise Agency.

1. National Peoples Congress – the legislative body passing the legislation
2. President of the Peoples Republic of China as the appointing official
3. Agency for Small and Medium Enterprise-is being used in this text as the name of the organization managing and implementing an SME guaranty program.
4. Director – The managing head of the Agency for Small and Medium Enterprise.
5. Deputy Director – The Deputy to the Director of the Agency for Small and Medium Enterprise.

SMALL and Medium Enterprise, (SME) ACT

§ 1. This Act may be cited as the “Small and Medium Enterprise Act”.

§ 2. (a) The essence of Peoples Republic of China’s system of private enterprise is open competition. Only through full and free competition can free markets, free entry into enterprise, and opportunities for the expression and growth of personal initiative and individual judgment can be assured.

The preservation and expansion of such competition is basic to the economic well being of this Nation. Such well-being cannot be realized unless the actual and potential capacity of Small and Medium Enterprises are encouraged and developed. It is the declared policy of National Peoples Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-enterprise enterprises in order to preserve competitive enterprise.

(b) (1) It is the declared policy of the National Peoples Congress that the Government of the Peoples Republic of China, through the Agency for Small and Medium Enterprise, acting in cooperation with other Departments of the National Government other relevant Provincial and City Governments, should aid and assist small enterprises, as defined under this Act, to increase their ability to compete in international markets by August 21, 2001

- (A) Enhancing their ability to export,
- (B) Facilitating technology transfers,
- (C) Enhancing their ability to compete effectively and efficiently against imports,

- (D) Increasing the access of small and medium enterprises to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in domestic as well as international trade,
- (E) Disseminating information concerning National, Provincial, local and private programs and initiatives to enhance the ability of small and medium enterprises to compete in domestic and international markets, and

(c) It is also the declared policy of the National Peoples Congress that the Government, through the Agency for Small and Medium Enterprise should aid and assist small and medium enterprises which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this Act are also to be used to assist such enterprises.

§ 3 (a) (1) For the purposes of this Act, a small or medium enterprise shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

(2) ESTABLISHMENT OF SIZE STANDARDS. —

(A) **IN GENERAL:** In addition to the criteria specified in paragraph (1), the Agency for Small and Medium Enterprise may specify detailed definitions or standards by which a enterprise may be determined to be a small enterprise or medium concern for the purposes of this Act.

(B) **ADDITIONAL CRITERIA. —**The standards described in paragraph (1) may utilize number of employees, dollar volume of enterprise, net worth, net income, a combination thereof, or other appropriate factors.

(C) **REQUIREMENTS. —**Unless specifically authorized by statute, no department or Agency of the National, Provincial or City Government may prescribe a size standard for categorizing a enterprise as a small or medium enterprise, unless such proposed size standard is approved by the Agency for Small and Medium Enterprise.

(3) When establishing or approving any size standard pursuant to paragraph (2), the Agency for Small and Medium Enterprise shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Agency.

(b) For purposes of this Act, the term “credit elsewhere” means the availability of credit from non-Governmental sources on reasonable terms and conditions

taking into consideration the prevailing rates and terms in the community in or near where the enterprise transacts enterprise for similar purposes and periods of time.

§ 4. (a) In order to carry out the policies of this Act there is hereby created an Agency under the name “Agency for Small and Medium Enterprise” (herein referred to as the Agency), which Agency shall be under the general direction and supervision of the Director and (shall or shall not) be affiliated with or be within any other Agency or department of the National Government. The principal office of the Agency shall be located in Beijing China. The Agency may establish such branch and regional offices in other places in the Peoples Republic of China as may be determined by the Agency.

(b) (1) The management of the Agency shall be vested in a Director who shall be appointed by the President and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small and medium enterprises’ needs and problems. The Director shall not engage in any other enterprise, vocation, or employment than that of serving as Director. The President also may appoint a Deputy to the Agency. The Director is authorized to appoint ____ Associate Deputy Directors to assist in the execution of the functions vested in the Agency. The Deputy Director shall be Acting Director of the Agency during the absence or disability of the Director or in the event of a vacancy in the office of the Director.

(2) RISK MANAGEMENT DATABASE.

(A) ESTABLISHMENT. -The Agency shall establish, within the management system for the loan programs authorized by this Act, a management information system that will generate a database capable of providing timely and Appendix B- Model Legislation for Guaranty Loan Program accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(B) INFORMATION TO BE MAINTAINED. -In addition to such other information as the Agency considers appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to-

- (i) The identity of the institution making the guaranteed loan;
- (ii) The identity of the borrower;
- (iii) The total dollar amount of the loan;
- (iv) The total dollar amount of Agency exposure in each loan;
- (v) The geographic area in which the borrower has its principal office;
- (vi) The principal line of enterprise of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);

- (vii) The delinquency rate for each program (including number of instances and days overdue);
- (viii) The number and amount of repurchases, losses, and recoveries in each program;
- (ix) The number of deferrals or forbearances in each program (including days and number of instances);
- (x) Comparisons on the basis of loan program, lender, geographic district and region, for all the data elements maintained; and
- (xi) Underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of enterprise, credit history, and type of loan.

(C) DEADLINE FOR OPERATIONAL CAPABILITY. –The database established under subparagraph (A) shall-

- (i) Be operational not later than _____; and
- (ii) Capture data beginning on the first day of _____ and thereafter.

- (c) (1) There is hereby established in the Treasury a Small and Medium Enterprise Loan Fund, which shall be available for financing functions, performed under this Act.
- (2) All repayments of loans, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Agency pursuant to this Act shall be paid into the Small and Medium Enterprise Loan Fund.
- (3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Director shall determine.
- (4) The Agency is hereby authorized to expend funds as may become available through governmental appropriations or by private sector contributions.
- (5)(A) The Agency is authorized to make and issue notes to the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by this Act and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Agency with the approval of the Treasury. Such notes shall bear interest at a rate fixed from time to time by legislation of this body. The Treasury is authorized and directed to purchase any notes of the Agency issued hereunder, and, for that purpose, the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any

securities issued and the purposes for which such securities may be issued under such Act, as amended, are extended to include the purchase of notes issued by the Agency. All redemptions, purchases, and sales by the Treasury of such notes shall be treated as public debt transactions of the Peoples Republic of China. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

- (B)(i) Monies in the funds established in subsection (c)(1) not needed for current operations may be paid into miscellaneous receipts of the Treasury.
 - (ii) Following the close of each fiscal year, the Agency shall pay into the miscellaneous receipts of the Treasury the actual interest that the Agency collects during that fiscal year on all financings made under this Act.
- (C) There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the funds established by subsection ©(1), but not previously reimbursed.

(d) PROHIBITION ON THE PROVISION OF ASSISTANCE. –

Notwithstanding any other provision of law, the Agency is prohibited from providing any financial or other assistance to any enterprise, concern or person engaged in the production or distribution of any product or service that has been determined to be illegal or not in the best of interest of the government.

§ 5 (a) The Agency shall have the power to adopt, alter, and use a seal, which shall be judicially noticed. The Director is authorized, subject to any classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Agency, with the consent of any board, commission, independent establishment or executive department of the Government, may avail itself on a reimbursable or non-reimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this Act.

(b) In the performance of, and with respect to, the functions, powers, and duties vested by this Act the Director may—

- (1) Sue and be sued in any court of record; but no attachment, injunction, garnishment, or other similar process, shall be issued against the Director or his/her property;

- (2) Under regulations prescribed by the Director, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in the Director's discretion and upon such terms and conditions and for such consideration as the Director shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by the Agency in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by the Agency and all legal or equitable rights accruing to the Agency in connection with the payment of such loans until such time as such obligations may be collected in full;
- (3) Deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Director shall determine to be reasonable, any real property conveyed to or otherwise acquired by the Agency in connection with the payment of loans granted under this Act;
- (4) Pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Agency in connection with loans made by the Agency. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Agency. The power to convey and to execute in the name of the Agency deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Agency pursuant to the provisions of this Act may be exercised by the Director or by any officer or agent appointed by the Director without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Director from delegating such power by order or by power of attorney, in his/her sole discretion, to any officer or agent he may appoint;
- (5) Acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in this Act;
- (6) Make such rules and regulations, as the Director deems necessary to carry out the authority vested in the Director of the Agency by or pursuant to this Act;
- (7) In addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of contractors by when it is determined such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act: Provided, That with respect to guaranty loans, where the lender is servicing the loan, the Director may, in the discretion of and pursuant to regulations promulgated by the Director, authorize participating lending institutions to take actions relating to loan

servicing on behalf of the Director and Agency, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) Accept the services and facilities of any Provincial, City or local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of this Act;

(9) Upon purchase by the Agency of any guaranty loan entered into under this Act, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(10) Make such investigations as the Director deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act. The Agency shall permit any person to file with it a statement in writing, under oath or otherwise as the Agency shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Agency is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the Peoples Republic of China. In case of a refusal to obey a subpoena issued to, any person, including a recipient or participant, the Agency may invoke the aid of any court of the Peoples Republic of China within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on enterprise, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Agency, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found; and

(11) Impose, retain, and use only those fees, which are specifically authorized by the following:

(c) To such extent as the Director finds necessary to carry out the provisions of this Act, the Director is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such

cases such services shall be without regard to any classification laws. Any individual so employed may be compensated at a rate not in excess of (insert the maximum per day rate).

- (d) (1) Subject to the requirements and conditions contained in this subsection, upon application by a small enterprise concern which is the recipient of a loan made under this Act;
- (2) The Agency suspend, (defer), for a period of not to exceed ___ months any small enterprise concern's obligation under this subsection only if—
- (A) Without such suspension of the obligation, the enterprise concern would, in the sole discretion of the Agency, become insolvent or remain insolvent;
 - (B) With the suspension of the obligation, the enterprise concern would, in the sole discretion of the Agency, become or remain a viable enterprise entity; and
 - (C) The enterprise concern executes an agreement in writing satisfactory to the Agency as provided by paragraph (4).
- (3) Notwithstanding the provisions of this Act, the Agency may extend the maturity of any loan on which the Agency undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.
- (4) (A) Prior to the suspension by the Agency of any enterprise concern's obligation under this subsection, the Agency, consistent with the purposes sought to be achieved herein, shall require the enterprise concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was suspended, either—
- (i) By periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or
 - (ii) Pursuant to a repayment schedule agreed upon by the Agency and the enterprise concern, or
 - (iii) By a combination of the payments described in clause (i) and clause (ii).
- (B) In addition to requiring the enterprise concern to execute the agreement described in subparagraph (A), the Agency shall, prior to the suspension of the obligation, take such action, and require the enterprise concern to take such action as the Agency deems appropriate in the circumstances, including the provision of such security as the Agency deems necessary or appropriate to insure that the rights and interests of the lender (Agency or participating lender) will be safeguarded adequately during or after the period in which such obligation is suspended.

- (5) The term “required payments” with respect to any loan means payments of principal and interest under the loan.
- (e) (1) The guaranteed portion of any loan made pursuant this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Agency shall establish, subject to the following limitations:
- (A) Prior to the Agency’s approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Agency, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guaranty agreement and the regulations of the Agency;
 - (B) All fees due the Agency on a guaranteed loan shall have been paid in full prior to any sale; and
 - (C) Each loan shall have been fully disbursed to the borrower prior to any sale.
- (2) After a guaranteed portion of a loan is sold the lender shall remain obligated under its guaranty agreement with the Agency, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

§ 6. (a) LOANS TO SMALL ENTERPRISE ENTERPRISES; ALLOWABLE PURPOSES; QUALIFIED ENTERPRISE; RESTRICTIONS AND LIMITATIONS - The Agency is empowered to the extent and in such amounts as provided in advance by this body or private contributions to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small and medium size enterprise concern under this Act. Such financings are to be made in cooperation with banks or other financial institutions through agreements to participate on a guaranteed basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL -

- (A) CREDIT ELSEWHERE - No financial assistance shall be extended pursuant to this subsection if the applicant, in the opinion of the Director can obtain credit elsewhere on reasonable terms and conditions without the benefit of such assistance being provided by this Act.
- (B) BACKGROUND CHECKS - Prior to the approval of any loan made pursuant to this Act, the Director may verify the applicant’s credit and criminal background, or lack thereof, through the best available means and

use such information in determining whether or not to extend credit to the applicant

(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 guaranty basis under this Act, such participation by the Agency shall be equal or not greater than—

- (i) ___ Percent of the balance of the financing outstanding at the time of disbursement of the loan; or
- (ii) ___ 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 ___.

(3) INTEREST RATES —

(A) INTEREST RATES. —Notwithstanding the provisions of the constitution of any Province or City limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Agency.

(B) PAYMENT OF ACCRUED INTEREST. —

- (i) IN GENERAL. —Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(4) LOAN MATURITIES, DEFERMENTS –

(A) MAXIMUM MATURITIES - No such loans including renewals and extensions thereof may be made for a period or periods exceeding _____ years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of _____ years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(B) PAYMENT DEFERMENT - The Agency may defer payments on the principal of such loans for a grace period and use such other methods, as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

- (5) PARTICIPATING LENDERS - The Agency shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.
- (6) GUARANTY FEES —
- (A) IN GENERAL. —With respect to each loan guaranteed under this Act, the Agency shall collect a guaranty fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:
- (i) A guaranty fee equal to __ percent of the guaranteed share of a total loan amount that is not more than _____.
 - (ii) A guaranty fee equal to __ percent of the guaranteed share of a total loan amount that is more than _____, but not more than _____.
 - (iii) A guaranty fee equal to _____ percent of the guaranteed share of a total loan amount that is more than _____.
- (B) Reserve - Retention of Certain Fees by Lenders
- (7) RESERVE – LENDER CLASSIFICATIONS – We have reserved this paragraph for the possibility of extending greater authority to lenders/guarantors and re-guarantors that meet certain criteria set by the Agency.
- (8) LOAN LIQUIDATION
- (A) IN GENERAL. —The Director may permit lenders participating in the Program to liquidate loans made with a guaranty from the Agency pursuant to a liquidation plan approved by the Director.
- (9) JOB CREATION AND COMMUNITY BENEFIT. —In providing assistance under this paragraph, the Agency shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—
- (A) Have the greatest potential for—
- (i) Creating new jobs for individuals whose employment is involuntarily terminated due to reductions in State Owned Industries; or
 - (ii) Preventing the loss of jobs by employees of enterprises suffering from reduction of expenditures of National, Provincial or Local Governments; and
 - (iii) Have substantial potential for stimulating new economic activity in communities.

(10) LATE PAYMENT FEES –

(A) The Agency is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranty under this subsection in an amount not to exceed ___ percent of the monthly loan payment per month plus interest.

(11) ANNUAL FEE —

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

(12) CONDUCTING PILOT PROJECTS—

(A) IN GENERAL—The Agency may from time to time conduct pilot projects to test new and unique lending initiatives that in the opinion of the Director may assist in improving the lending program and bring better services to the small and medium enterprises.

(B) PILOT PROGRAM DEFINED—In this paragraph, the term “pilot program” means any program specifically designed by the Agency to test the potential of such program being of assistance to the SME community. It shall include, but is not limited to a lending program, initiative, project, innovation, or other activity not specifically authorized by law.

(13) CALCULATION OF SUBSIDY RATE—All fees, interest, and profits received and retained by the Agency under this subsection shall be included in the calculations made by the Treasury Department to offset the cost to the Agency of purchasing and guarantying loans under this Act.

(14) LEASING BORROWER OWNED FACILITY—In addition to such other lease arrangements as may be authorized by the Agency, a borrower may permanently lease to one or more tenants not more than ___ percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than ___ percent of the total enterprise space in the property.

(15) REAL ESTATE APPRAISALS—

(A) With respect to a loan made under this Act that is secured by commercial or residential real property, an appraisal of such property by an appraiser who has qualifications acceptable to the Director—

- (i) Shall be required by the Agency in connection with any such loan for more than _____; or
- (ii) May be required by the Agency or the lender in connection with any such loan for _____ or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

§ 7. The President may transfer to the Agency any functions, powers, and duties of any department or Agency, which relates primarily to small and medium enterprise problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or Agency from which the transfer is made.

§ 8. No loan shall be made or equipment, facilities, or services furnished by the Agency under this Act to any enterprise unless the owners, partners, or officers of such enterprise (1) certify to the Agency the names of any attorneys, agents, or other persons engaged by or on behalf of such enterprise for the purpose of expediting applications made to the Agency for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such enterprise for a period of two years after any assistance is rendered by the Agency to such enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional service, any person, who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Agency occupying a position or engaging in activities, which the Agency shall have determined involve discretion with respect to the granting of assistance under this Act; and (3) furnish the names of lending institutions to which such enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

§ 9. To the fullest extent the Agency deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct cost incurred by the Agency.

§ 10. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefore, or for the purpose of influencing in any way the action of the Agency, or for the purpose of obtaining money, property, or anything of value, under this Act, shall be

punished by a fine of not more than _____ or by imprisonment for not more than _____ years, or both.

- (b) Whoever, being connected in any capacity with the Agency, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Agency or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Agency makes any false entry in any book, report, or statement of or to the Agency, or without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Agency, or (4) gives any unauthorized information concerning any future action or plan of the Agency which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Agency, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.
- (c) Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Agency, shall be fined not more than _____ or imprisoned not more than five years, or both; but if the value of such property does not exceed _____, he shall be fined not more than _____ or imprisoned not more than one year, or both.
- (d) (1) Whoever misrepresents the status of any concern or person as a “small or medium enterprise,” in order to obtain for oneself or another any benefit under this Act shall be punished by a fine of not more than _____ or by imprisonment for not more than _____ years, or both and be subject to (1) suspension and debarment from obtaining any benefits of any Government contracts or enterprise benefits at the National, Provincial or City level on the basis that such misrepresentation indicates a lack of enterprise integrity that seriously and directly affects the present responsibility to perform any contract awarded by Government or to receive such enterprise benefits, including but not limited to the financing benefits under this Act and (2) be ineligible for participation in any program or activity conducted under the authority of this Act. for a period not to exceed _____ years.

§ 11. (a) The Agency shall not duplicate the work or activity of any other department or Agency of the Agency Government and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or Agency responsible for such work or

activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

(b) As used in this Act—

- (1) “Agricultural enterprises” means those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and
- (2) “Credit elsewhere,” means the availability of sufficient credit from non-Agency sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts enterprise for similar purposes and periods of time.

§ 12. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 13. (a) (1) for year _____ and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely for the following:

- (A) To carry out the Programs under this Act, but not to exceed the annual funding level, as specified in this Act;
- (B) to pay all the expenses of the Agency.

(2) Notwithstanding any other provision of law, the Agency shall enter into commitments for guaranty loans, and other programs authorized under this Act, in the full amounts provided by law subject only to:

- (A) The availability of qualified applications, and
- (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Agency to reduce or limit its authority to enter into such commitments.

(3) Except as may be otherwise specifically provided by law, the amount of guaranty loans authorized in this section—

(A) Shall mean the net amount of the loan principal guaranteed by the Agency (and does not include any amount which is not guaranteed); and

(B) Shall be available for a national program, including any special or pilot program(s) directed to identified sectors of the small enterprise

community or to specific geographic regions of the Peoples Republic of China, as may be determined by the Director.

(b) There is authorized to be appropriated to the Agency for the year(s) ____ such sums as may be necessary to carry out the provisions of this Act. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including the administrative functions authorized by Act as listed below;

(1) PROGRAM LEVELS - The following program levels are authorized for year ____:

(A) For the programs authorized by this Act, the Agency is authorized to make _____ in Guaranty Loans;