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SMALL BUSINESS FINANCING AND INVESTMENT ACT OF 2009

OCTOBER 26, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 3854]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3854) to amend the Small Business Act and the Small Business Investment Act of 1958 to improve programs providing access to capital under such Acts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE OF THE BILL AND SUMMARY

The Small Business Financing and Investment of 2009 extends through fiscal year 2011 the federal government's primary small business lending and investment programs. In doing so, the legislation makes key reforms to these programs that are intended to improve the flow of capital to small firms amidst one of the worst economic downturns in decades. The legislation also establishes two new programs that are intended to fill the gaps in the SBA's existing array of capital access programs, particularly in the provision of capital to early-stage small businesses in capital-intensive industries and for small firms whose access to capital is limited by the cost of financing.

A result of the collapse in housing prices and resulting recession in 2008 has been a broad-based tightening of credit for small businesses of all types and sizes. This has severely curtailed the ability of small businesses to access credit and investment capital. Additionally, these conditions have continued unabated despite numerous efforts to stabilize the housing sector and restart lending through federal spending. This legislation has as its primary objective the improvement of the flow of capital to small firms in an economic climate that has made capital and credit more constrained than at any time in the history of the SBA's capital access mission.

The legislation will increase the maximum gross size of 7(a) loans by 50 percent—from the current level of $2 million to $3 million. This increase in the maximum loan size will help provide small firms with larger amounts of capital under the program without increasing the SBA's level of risk exposure with larger guarantee amounts on larger loans. This change will also ensure that the program remains focused on startup and early-stage small firms, businesses that have historically encountered the greatest difficulties in accessing credit. It also avoids making small borrowers carry a disproportionate share of the risk associated with larger loans. The maximum size of CDC financings will also be significantly increased—from the current limit of $10 million to $25 million—and existing statutory limits that prohibit borrowers from securing CDC loans and 7(a) loans for the maximum combined amounts will be eliminated.

The bill also extends authority for supplemental lending initiatives originally passed under P.L. 111–5, the American Recovery and Reinvestment Act of 2009 (ARRA), which significantly freed the flow of capital to small businesses. This includes an increase in the guaranty on SBA 7(a) loans to 90 percent and waives fees on 7(a) and CDC loans. The Business Stabilization Loans (i.e. the ARC loan program) established under ARRA will also see improvements in the way of reduced documentation requirements, expanded eligibility for the use of ARC loan proceeds, and an increase in maximum ARC loan amounts from $35,000 to $50,000. Perhaps most importantly, however, the bill establishes a Capital Backstop Program under which the SBA will provide assistance to lenders in the application, processing, and underwriting functions for 7(a) loans, thus acting as a conduit to match lenders who are willing to make loans with borrowers in need of capital. Under this program, the SBA would also act as a lender of last resort for creditworthy borrowers in times of credit shortage or when private lend-

ers withdraw from lending in an effort to hoard capital—as was widely seen in the recent credit crunch.

The bill will establish permanent authority within the SBA to administer programs aimed at providing stability to the secondary markets for 7(a) and the CDC loan programs. These programs were originally enacted under for limited timeframes, but the significant time lag in the SBA's implementation of these programs combined with the ongoing weakness in SBA lending necessitates their continued operation, particularly in light of the possibility for future downturns. Together with the increase in 7(a) and CDC loan size and the enhanced loan incentives from ARRA, the extension of these initiatives in H.R. 3854 will significantly improve the credit conditions for small businesses, add stability to the small business lending markets, and improve the availability of capital for small firms.

As a secondary objective, the bill seeks to fill gaps in the SBA's array of capital access programs. With the elimination of the SBIC Participating Securities program, the SBA no longer provides any form of patient equity investment to small businesses in need of capital. As a result, the agency has become completely reliant on debt-based programs, which are more suited to providing later-stage, expansion capital to cash-flow-positive businesses. This has particularly hampered investment in early-stage and capital-intensive small businesses, which lack the resources to service debt capital. These inherent limitations have only been aggravated by the economic downturn and the near-collapse in the U.S. capital markets. Venture capital financing and investments in early-stage businesses has stagnated since the last quarter of 2008. As a result, the gap for investment in early-stage and capital-intensive small businesses has grown wider, and this critical component of the small business community has continued to be underserved by existing government programs.

At the same time, creditworthy small businesses have continued to struggle with issues stemming from the high cost of capital. Nowhere is this more pronounced than in the healthcare field, where the adoption of health information technology (HIT) has been slowed by the high cost of the technology and an inability of small health providers to finance this asset in a cost-effective manner. Despite the fact that small health providers are small businesses, most do not qualify for participation in existing Small Business Administration (SBA) capital access programs (such as the 7(a) or 504 loan programs) because they typically have access to conventional sources of credit. Additionally, these programs are ill-suited to overcoming the financial barrier that exists in the context of HIT. This is because the SBA's existing lending programs were originally designed to overcome a gap in the availability of capital. By contrast, the barrier to HIT for small medical practices is fundamentally a gap in the affordability of capital. For this reason, the SBA's existing lending programs are inadequate to drive wider adoption of HIT for small practices.

The Small Business Financing and Investment of 2009 would fill these gaps in the SBA's capital access mission by establishing two new programs—the Small Business Early Stage Investment (SBESI) program and a Small Business Health Information Technology (HIT) Financing program—that will provide small busi-

nesses with access to equity investing and affordable credit. Under the SBESI program, the SBA will provide matching grant funding to act as co-investment in highly qualified investment companies that will focus on investing in small businesses, with particular emphasis on investing in early-stage small businesses in targeted capital-intensive industries. Similarly, the HIT Financing program will complement the agency's existing array of business loan programs by making reduced cost capital available to small health practices for the purpose of purchasing HIT.

Finally, the Small Business Financing and Investment of 2009 will update and streamline the SBA's existing lending and investment programs. The bill incorporates several initiatives aimed at encouraging more lenders to participate in the capital access programs and make more loans available to small firms. First, the 7(a) lending process is simplified and streamlined, particularly among community banks and lenders who do not currently participate in the program. A Small Bank Outreach program will be established with the specific mission of identifying and supporting small banks, credit unions, and community lenders to participate in the program. The legislation also establishes a Rural Lender Outreach program to reduce the paperwork burden associated with 7(a) loans.

This legislation also addresses several deficiencies that discourage existing lenders from fully utilizing the programs. The legislation will put an end to improper denials and long waiting periods when lenders apply for the SBA to honor its guarantees by requiring the SBA to make prompt and proper payment on guaranty repurchase applications. A National Lender Training Program will be established to train new and participating lenders on SBA's lending systems, policies, and procedures, and to help reduce incidents of improper loan underwriting and documentation in the program.

Perhaps equally important, the bill will seek to halt the continued flight of SBICs that participate in the program by establishing an expedited licensing process to keep successful SBICs that are in good standing involved in the program. The bill will also revise the SBIC leverage limitations to create an incentive for successful, well-run SBICs to remain in the program by permitting SBICs that are managed by the same team to access the increased leverage limits available for a family of SBIC funds. Additionally, the bill inserts mandatory language in the Small Business Investment Act of 1958, directing the SBA Administrator to actively engage in affirmative actions to expand the number of investment companies in the New Markets Venture Capital (NMVC) and Renewable Energy Capital Investment (RECI) programs and ensure that both programs have a broad nationwide distribution.

To ensure that the SBA's private sector lenders receive fair and expeditious resolution of their complaints, an independent and objective Ombudsman's office will be created to resolve lenders' appeals separately from the SBA's program administration offices. This measure will enhance participation in the lending programs by ensuring that program participants can make informal inquiries or file formal appeals to an independent, disinterested party in the strictest confidence and without fear or retaliation. The Ombudsman and independent review process, however, would not be a

binding determination and would not affect other existing administrative procedures or judicial remedies.

The existing capital access programs will also see an increased emphasis on specific public policy objectives. A Rural Lender Outreach program is established in the 7(a) program to focus on making loans with increased guarantees and reduced paperwork burdens for entrepreneurs in rural communities. The SBIC program will provide businesses with greater investment under the provisions of the bill that expand the Energy Saving Debenture program and increase the amounts of leverage available to invest in veteran-owned businesses. Socially and economically disadvantaged businesses will also benefit from permanent authority for the Community Express Loan program and the Increased Veteran Participation Loan programs. Both the NMVC and RECI programs will have an increased emphasis on increasing capital investments for small businesses engaged in manufacturing. The legislation will also expand access to 7(a) loans for businesses that are organized as cooperative enterprises and will prohibit the SBA from applying disparate treatment to loans that are used to finance goodwill when a business is bought or sold.

Ongoing deficiencies in the Small Business Administration's (SBA) disaster assistance program will also be addressed. The SBA will have additional financial assistance tools in the way of grant assistance programs that are intended to better fit the various needs of small businesses following severe disasters. The SBA will also be able to be more responsive to the needs of individual disaster victims with improvements to the way in which disaster assistance is approved, disbursed, and repaid. The SBA's disaster planning and preparedness will also be enhanced through the creation of Regional Disaster Working Groups.

The Small Business Financing and Investment Act of 2009 is comprehensive legislation that will significantly improve access to credit and capital for businesses at each stage of growth and in any economic climate. By filling the gaps in the SBA's capital access mission and addressing deficiencies in the SBA's lending and investment programs, the agency will be significantly more adept at meeting the needs of small firms. Taken together, the provisions contained in the Small Business Financing and Investment Act will address the widespread difficulties that small firms have encountered in accessing credit and capital during the recent recession and will ensure that the small business community has ample credit and investment capital to create jobs and expand operations as the economy recovers.

II. Background and Need for Legislation

The SBA operates an array of financing programs that are intended to bridge the gap in the conventional markets that small businesses encounter in trying to secure access to affordable capital. In the 7(a) and 504 programs, entrepreneurs are provided with greater access to capital through the extension of federal guarantees on long-term loans. In the Microloan program, entrepreneurs receive SBA-subsidized small dollar loans in conjunction with basic managerial and technical assistance in operating their business.

The SBA also administers programs aimed at providing investment in small businesses similar to what would be provided

through the private equity markets. In the SBIC program, the SBA provides funding to specially licensed Small Business Investment Companies, which then use their own funds, plus resources borrowed with an SBA guaranty or "leverage," to invest in small businesses. In the NMVC program, the SBA also provides specialized investment companies with leverage to invest in small businesses, but focuses this investment exclusively on small businesses located in low income ("LI") areas and couples this investment with matching grant assistance to provide marketing, management and other operational assistance to the businesses in which it invests. In these investment programs, the SBA shares the risk of loss with private-sector investors, thereby enabling these lenders to provide small businesses with greater access to capital than they could otherwise obtain in the conventional market.

7(a) Loan Program

The 7(a) loan program is the SBA's primary business loan program. It is the agency's largest and most important in terms of number of loans and program level supported. The program relies on private-sector lenders to provide loans that are, in turn, guaranteed by the SBA. The SBA has authority to guaranty up to 85 percent of loans of $150,000 and less, and up to 75 percent of loans above $150,000. Under provisions passed in the American Recovery and Reinvestment Act (ARRA), however, the SBA will provide up to a 90 percent guaranty on most loans made under the 7(a) program through the end of fiscal year 2010.

The proceeds from a 7(a) loan may be used for virtually any business purpose including: working capital, acquisition of furniture, fixtures, machinery and equipment, purchase of inventory, construction, renovation, and purchase of real estate. Because SBA loans are generally intended to encourage longer-term small business financing, actual loan maturities are based on the borrower's ability to repay, the purpose of the loan proceeds, and the useful life of the assets financed. However, maximum loan maturities have been established at twenty-five (25) years for real estate and equipment and seven (7) years for working capital.

Interest rates on 7(a) loans may be fixed or variable, and are negotiated between the borrower and the lender, subject to SBA maximums. Interest rate caps vary depending on loan size and maturity, but for most fixed rate 7(a) loans (i.e. loans of $50,000 or more), the interest rate must not exceed Prime plus 2.25 percent if the maturity is less than seven years, and Prime plus 2.75 percent if the maturity is seven years or more. Variable rate loans may be pegged to either the lowest prime rate or an SBA-determined optional peg rate. The lender and the borrower negotiate the amount of the spread which will be added to the base peg rate. The borrower and lender also negotiate the adjustment period for variable rate loans, which cannot adjust more often than once per month and must be consistent (e.g., monthly, quarterly, semiannually, annually or any other defined, consistent period).

To offset the costs of 7(a) loans to the taxpayer, the Agency charges borrowers and lenders a guaranty fee and servicing fee for each loan approved and disbursed. The amount of these fees is determined by the size of the guaranteed portion of the loan. The lender will usually charge the full amount of upfront guaranty fee

to the borrower. The lender's annual service fee, however, cannot be charged to the borrower. Under provisions passed in the American Recovery and Reinvestment Act (ARRA), however, the upfront guaranty fee paid by borrowers will be waived for loans made under the 7(a) program through the end of fiscal year 2010.

The SBA also administers several subprograms and pilot programs under the 7(a) marquee—these are the SBA Express, Community Express, Patriot Express, and Rural Lender Advantage programs. While the programs have their own distinguishing eligibility terms and distinct benefits, they are all operated under the framework of the 7(a) program.

SBA Express Program

As a subset of the 7(a) program, SBA Express provides a 50 percent loan guaranty on loan amounts up to $350,000. To account for this lower guaranty, however, lenders are allowed to perform their own loan analysis and procedures and receive SBA approval with a 36-hour maximum turnaround time.

Community Express Program

Community Express is a pilot SBA loan program that operates under the framework of the 7(a) loan program. Community Express was developed in May of 1999 in collaboration with the National Community Reinvestment Coalition (NCRC) and its member organizations and was designed to increase lending to designated geographic areas comprising low- and moderate-income areas and to women, minorities, and veterans.

The Community Express Program generally conforms to the SBA Express Loan Program policies and procedures. Community Express participants are allowed to use, to the maximum extent possible, their own loan analyses, loan procedures and loan documentation. This includes their own application forms, internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. However, in using their documents and procedures, participants must continue to follow their established and proven internal credit review and analysis procedures for loans of similar size and type.

Under the Community Express program, borrowers must receive technical and management assistance ("T.A.") prior to and following loan closing from a local non-profit provider or from the participating lender. The technical assistance must be coordinated, arranged, and when necessary, paid for by the lender. To encourage participating lenders to aggressively address the targeted markets, and to offset some of the additional costs associated with the technical assistance component, SBA's loan guaranty under the pilot program is the same as under the regular 7(a) program—a maximum of 85 percent on loans up to $150,000 and a maximum of 75 percent on loans over $150,000.

Patriot Express Initiative

In the spring of 2007, the SBA announced the establishment of a new 7(a) lending initiative for veterans known as the "Patriot Express Pilot Loan Initiative." Under this program, the SBA provides 7(a) loans for veterans and members of the military community wanting to establish or expand small businesses.

It is important to note, however, that the Patriot Express initiative does not provide small businesses with any material benefits beyond existing standard 7(a) loans. As with any other 7(a) loan, Patriot Express loans can be used for virtually any business purpose and are offered through the SBA's network of participating private-sector lenders. Guaranty approval for these loans are among the SBA's fastest, and carry the same guaranty levels as other 7(a) loans, which is up to 85 percent of loan amounts of $150,000 or less and up to 75 percent for loans over $150,000 up to $500,000. For loans above $350,000, however, lenders are required to take all available collateral. Interest on Patriot Express loans are also identical to that of other 7(a) loans, which is generally 2.25 percent to 4.75 percent over prime depending upon the size and maturity of the loan.

Rural Lender Advantage Initiative

In January of 2008, the SBA introduced a new initiative under the framework of the 7(a) loan program known as "Rural Lender Advantage" (RLA). This initiative is part of a broader SBA effort to promote the economic development of local communities, particularly in those facing the challenges of population loss, economic dislocation, and high unemployment. The Rural Lender Advantage program was intended to accommodate the loan processing needs of small community/rural-based lenders that make few or no 7(a) loans by simplifying and streamlining the Agency's application process and procedures, particularly for smaller SBA loans.

Lenders participating in the Rural Lender Advantage program receive support from a 7(a) facility designed exclusively for new or small SBA loan volume lenders submitting loan requests through a non-delegated lender process. Lenders also receive training and counseling assistance on the Agency's 7(a) loan policies and procedures from personnel in SBA field offices.

Loans made under the RLA program have a simplified 7(a) loan application and loan processing procedure for loans of $50,000 or less. Loans are capped, however, at a maximum loan limit of $350,000. The SBA applies standard guaranty rate, at 85 percent for loans of $150,000 or less, and 75 percent for loans above $150,000, and works to expedite processing of RLA loans in a target timeframe of five days or less.

The program underwent a phased rollout to each of the agency's ten regions through FY 2008. Since inception, the RLA program has made 650 loans in a total amount of $99.7 million. This represents far less than one percent of all 7(a) loans made under the program. Somewhat more notably, however, the RLA program has had the participation of over 567 lenders. Like Patriot Express loans, however, RLA loans do not carry any material benefits for small businesses over standard 7(a) loans. In this sense, both Patriot Express and RLA are primarily enhanced delivery mechanisms with aggressive marketing campaigns.

Business Stabilization Loans

Under Section 506 of P.L. 111–5, the American Recovery and Reinvestment Act (signed Feb. 17, 2009), Congress provided $255 million in funds for the SBA to carry out a Business Stabilization Loan program, also known as America's Recovery Capital (ARC)

loans. ARC loans were established to provide viable small businesses with subsidized, small-dollar loans to make payments of principal and interest, in full or in part, on one or more existing, qualifying small business loans for up to six months. In this manner, ARC loans provide an immediate infusion of capital to small businesses to assist with making payments of principal and interest on existing debt. These loans allow borrowers to redirect cash flow from making loan payments to investing in their businesses, to help sustain the business and retain jobs.

ARC loans are interest-free to the borrower, carry a 100-percent guaranty from the SBA to the lender, and require no fees paid to SBA. Loan proceeds are provided over a six-month period and repayment of the ARC loan principal is deferred for 12 months after the last disbursement of the proceeds. The repayment period, however, can extend up to five years.

In order to receive an ARC loan, a business must be viable, but experiencing immediate financial hardship. The best candidates for ARC loans are small businesses that in the past were profitable but that are currently struggling. In most cases, these businesses have been making loan payments or are just beginning to miss loan payments due to financial hardship.

ARC loans are made by commercial lenders who are SBA participants. The SBA pays these banks a monthly interest rate throughout the term of the loan. ARC loans will be offered by participating SBA lenders for as long as funding is available or until September 30, 2010, whichever comes first.

7(a) Secondary Market and Secondary Market Guaranty Programs

The SBA was also provided with authority under ARRA to address the severe dislocations in the SBA loan secondary markets with the establishment of two programs to provide loans and guarantees to broker and dealers that purchase small business loans. Under Section 503 of ARRA, the SBA was directed to establish a SBA Secondary Market Guaranty Authority to provide a federal guaranty for pools of first lien loans made in CDC program financings that are sold to third-party investors. Section 509 of ARRA established a Secondary Market Lending Authority to make loans to systemically important SBA secondary market broker-dealers in 7(a) loans. These loans would be fully secured by the borrowers' existing portfolio of SBA-backed loans and the proceeds from these loans could only be used to purchase small business loans from banks. These loans would then be held or pooled and sold to investors to fund additional purchases of SBA loans. In this manner, the SBA Secondary Market Lending and Secondary Market Guaranty programs would provide funding and guarantees to the broker and dealer community to ensure the uninterrupted working of the secondary market for small business loans.

ARRA contained emergency rulemaking authority for the SBA to waive the notice and comment requirements of the Administrative Procedures Act and implement the program in 15 days. To date, however, the SBA has not implemented the 7(a) Secondary Market Lending or Secondary Market Guaranty initiatives contained in Act. Furthermore, the agency has expressed its intention of implementing this program with interest rates dating back to the last quarter of FY 2008. These rates are significantly higher than what

could be available today in the open market and will likely make the program cost-prohibitive and unworkable for the vast majority of broker-dealers who the program was originally intended to help.

504 Certified Development Company Program

The CDC Program provides permanent, fixed rate financing for businesses to acquire industrial or commercial buildings or heavy equipment and machinery. The program is delivered by local Certified Development Companies (CDCs) working in partnership with private lenders and the SBA. Typically, a CDC project includes a loan secured with a senior lien from a private-sector lender covering up to 50 percent of the project cost, a loan secured with a junior lien from the CDC (backed by a 100 percent SBA-guaranteed debenture) covering up to 40 percent of the cost, and a contribution of at least ten percent equity from the small business being helped.

The CDC program differs from the 7(a) loan program, which provides variable rate, shorter term financing for general business needs. Additionally, unlike 7(a) loans, which are delivered by financial institutions, 504 loans are delivered through CDCs and must satisfy certain economic development criteria.

7(m) Microloan Program

The Microloan Program provides very small loans to start-up, newly established, or growing small business concerns. Under this program, the SBA makes funds available to nonprofit community based lenders (also known as "micro-intermediaries") at a discount of up to two percent from the cost of a five-year Treasury bond rate. These intermediaries, in turn, make loans to eligible borrowers in amounts up to a maximum of $35,000. The average loan size is about $13,000.

Applications are submitted to the local intermediary and all credit decisions are made on the local level. Loan repayment periods are up to individual intermediary lenders, but cannot exceed six years. Other loan terms vary depending upon the size of the loan, the planned use of funds, the requirements of the intermediary lender, and the needs of the small business borrower. Interest rates vary, depending upon the intermediary lender and costs to the intermediary from the U.S. Treasury. Generally these rates will be between eight and 13 percent.

What distinguishes Microloans from other forms of SBA loan assistance is the addition of technical assistance for borrowers. Each intermediary is required to provide business-based training and technical assistance to its borrowers. This assistance is often critical to the success of borrowers in early-stage or startup businesses.

Small Business Investment Company Program

The Small Business Investment Company (SBIC) program was established in 1958 as part of the Small Business Investment Act. The program was originally created to stimulate and supplement the flow of private equity capital and long-term loans to small business concerns, thereby bridging the gap between traditional debt-based financing sources and entrepreneurs' needs for long-term equitable financing.

Like many of the SBA's financing programs, the SBIC program operates as a public-private partnership. SBICs are state-chartered entities organized solely for the purpose of providing a source of equity capital for small business concerns. After organizing their funds and receiving SBA approval, SBICs use their own funds, plus resources borrowed with an SBA guaranty or "leverage," to invest in small businesses. Although subject to SBA regulation, SBICs remain privately owned and managed and make their own decisions about which small businesses investments to make.

The SBA provides leverage to SBICs in two forms—"debentures" and "participating securities." To obtain leverage, SBICs issue debentures or participating securities, which are guaranteed by the SBA. Separate pools of either SBA-guaranteed debentures or participating securities are formed and sold to investors through periodic securities offerings. An SBIC's business plan and investment strategy are the primary factors in determining the type of leverage used by the SBIC.

Debenture leverage has a term of ten years, with semi-annual interest payments and a lump sum payment of principal at maturity. The ten-year debenture carries prepayment penalties during the first five years, but no prepayment penalty thereafter. The interest rate on the debenture is determined by market conditions at the time of the pooling. Debenture leverage operates on a zero-subsidy basis, being funded by fees charged to the SBIC as well as by annual fees based on a subsidy rate determined at the time of commitment.

Participating securities function similar to debentures, but the SBA advances interest (known as "prioritized payments") to the participating security pool investors and is repaid these prioritized payments only out of profits of the fund. This makes participating securities unique among the SBA's programs. The SBA shares in the profits of the SBIC. Regardless of whether the SBIC earns profits, however, the full principal amount is due at ten-year maturity. Like SBIC debentures, participating securities leverage operates on a zero-subsidy basis, being funded by fixed commitment and drawdown fees as well as by annual fees paid out of profit distributions.

By their nature, debenture SBICs focus on companies that are mature enough to make current interest payments on the investment so that the SBIC can meet its interest obligations to SBA. Thus, debenture financing will generally be best suited if the SBIC plans to invest in portfolio companies with the ability to service debt. By contrast, participating securities SBICs are able to invest equity capital in earlier stage businesses because interest is accrued on their obligation to the SBA. Thus, participating securities are generally best suited for SBICs investing in either seed and early-stage businesses or businesses that do not have established cash flows.

Like the 504 and 7(a) programs, the SBIC program operates entirely from fees—meaning that no appropriation is required for the program. In 2004, however, the participating securities program ceased issuing new leverage commitments. This was largely the result of the Administration's decision to move the program to zero-subsidy in 2001, which was fundamentally unsuited to a program that functioned on patient equity investment in long-term assets. As a result, the program was essentially rendered insolvent by

2005 when the administration requested no program funding for the participating securities portion of the SBIC program in its annual budget request. The participating securities program has not been authorized for additional leverage since.

New Markets Venture Capital Program

Congress created the New Markets Venture Capital (NMVC) program in December of 2000 to address the unmet equity needs of low-income communities. The NMVC program was administered under the purview of the SBA and was modeled after the SBA's Small Business Investment Company (SBIC) program. A crucial difference between NMVC and SBIC, however, was that the NMVC program was established with the specific purpose of providing economic development in low-income (LI) areas. NMVCCs are also required to make all of their investments in "smaller enterprises," which are small business concerns with less than $6 million in net financial worth and that have not received more than $2 million in average net income the prior two years.

Like the SBIC debenture program, the NMVC program operates as a public-private partnership between the SBA and licensed New Markets Venture Capital Companies (NMVCCs). The SBA does not make direct investments in small business concerns through the NMVC program. Instead, the SBA provides funding to NMVCCs, which then use their own funds, plus leverage borrowed with an SBA guaranty, to make investments in smaller enterprises defined by SBA regulations that are located in LI geographic areas.

Although subject to SBA regulation, NMVCCs remain privately owned and managed and make their own decisions about which small businesses investments to make, within the constraints of NMVC statute, SBA regulations, and the terms of the NMVCC's participation agreement and Operational Assistance Grant award. In this sense, the SBA's role is essentially the same as with the SBIC program. The Agency selects participants for the NMVC program, provides funding for their investments and operational assistance activities, and regulates their operations to ensure that public policy objectives are being met. The SBA requires NMVCCs to provide regular performance reports and have annual financial examinations by SBA.

The SBA arranges funding for the debentures under procedures similar to those utilized in the SBIC program. The SBA supplements NMVCC's available capital through guarantees of debentures issued by the company in a face amount of up to 1.5 times its capital. The debentures have a term of up to ten years from the date of draw-down and are issued at a discount. Interest in the first five years is paid up front in the form of the discount, and is only payable for years six through ten. Principal is due at the end of year 10. The debentures are priced at a current market rate for comparable U.S. Government Treasury securities plus a small premium. The debentures are pre-payable without penalty after one year, and there are no SBA fees associated with the debenture.

One crucial advantage that the NMVCCs enjoy over SBICs is the addition of SBA administered operational assistance grants (OA). The SBA also will match the resources that the NMVCC has raised for operational assistance (whether in cash or in-kind) with an equivalent grant. The NMVCC must use the grant funds and

matching resources to provide marketing, management and other operational assistance to the businesses in which it invests or intends to invest. In principle, the program was intended to permit NMVC companies to use capital raised with New Markets Tax Credit allocations to meet the NMVC private capital match. In practice, however, this was not possible because the first NMTC allocations were made after NMVC private capital matches were due (e.g. after September 14, 2001).

Renewable Fuels Capital Investment Company Program

A Renewable Fuel Capital Investment (RFCI) program was created in December of 2007 under PL 110–140. This program authorized the creation of specialized Renewable Fuel Capital Investment Companies (RFCIC) to issue SBA-guaranteed debentures to invest in small businesses engaged in researching, manufacturing, developing, and bringing to market renewable energy sources. This includes the development of biodiesel, ethanol, and related research concerning other biomass fuels such as cellulosic ethanol. It also includes investment in wind-, solar-, hydro-, and geothermal-related energy projects. The RFCI program also provides grants to RFCICs to be used to provide operational assistance to entrepreneurs in management, marketing, and other technical assistance to increase the success of the small businesses.

RFCI program debentures are available in amounts up to 1.5 times the private investment capital of the RFCIC. The debentures will have a term of up to ten years from the date of draw-down and will be issued at a discount. Interest in the first five years will be paid up front in the form of the discount, and is only payable for years six through ten. Principal is due at the end of year 10. The administration may charge fees on RFCIC debentures sufficient to reduce the program's cost to zero, but also has the authority to make contributions to reduce the burden associated with those fees if and when an appropriation is made available for that purpose.

To date, the SBA has taken no action to implement the RFCI program. Under the existing statutory framework of the program, no appropriation is necessary to implement the RFCIC program, but the legislation does contain authority for the SBA to make contributions for the purpose of reducing or eliminating fees associated with debentures issued under the program.

THE NEED TO REAUTHORIZE AND MODERNIZE THE SBA CAPITAL ACCESS PROGRAMS

Recession and Credit Contractions

The U.S. economy has been in a state of recession since December 2007. These economic conditions grew from the rapid and widespread boom in credit fueled primarily by a bubble in real estate prices, followed by their subsequent collapse. A corollary to the boom and bust cycle, however, was a broad-based tightening of credit for small businesses of all types and sizes. This has severely curtailed the ability of small businesses to fuel economic growth and remain solvent through the ensuing recession.

In large part, these declines in small business lending were the result of the near-standstill in domestic lending that occurred after the collapse of Lehman Brothers in September of 2008. According

to the January 2009 Federal Reserve Senior Loan Officer Opinion Survey on Bank Lending Practices, approximately 70 percent of banks surveyed reported tighter lending standards on small business loans. Additionally, in the last year, the delinquency rates of commercial and industrial loans, as reported by the Federal Reserve, reached their highest levels since the fourth quarter of 2004.

The SBA's lending and investment programs are intended to bridge the gap in financing that occurs when the private markets contract. Conventional wisdom would suggest that these programs would expand when the gap in private credit grows during times of economic stress. Unfortunately, that has not been the case in this economic downturn. A growing number of businesses have struggled to secure loans and other forms of capital through the SBA's lending and investment programs. Despite moderate improvements that can be attributed to the small business lending initiatives contained in ARRA, the conditions for small business credit have been slow to improve.

While conditions are better today, the July 2009 Senior Loan Officer Opinion Survey showed that 36 percent of banks reported tightening credit standards for small firms in the last three months, while only two percent reported standards easing somewhat. Furthermore, many lenders who historically have been leaders in SBA lending remain hesitant to make small business loans. CIT, the top lender in 2008, has curtailed its small business lending activity significantly in the last year and is at high risk of exiting this sector entirely.

If the declines in small business lending is to be halted, inherent deficiencies in the SBA's capital access programs must be addressed. The agency must have additional lending programs that are better suited to operate under conditions where lenders are under increased capital constraints and extremely sensitive to risk. Additionally, these programs must provide significant tangible benefits to small business borrowers that are struggling with lower revenues and greater uncertainty in the near-term. While the SBA's existing programs cannot meet these criteria, the changes implemented under H.R. 3854 will address these needs.

Dislocations in Secondary Market Activity

The secondary market provides lenders with liquidity for loan-making by enabling them to sell the guaranteed portion of SBA loans to private brokers and investors. In recent years, lenders to the small business community have become increasingly dependent upon the secondary market as a source of liquidity to make new loans. In the wake of the collapse of lending markets that occurred in the last quarter of 2008, however, the secondary market for small business loans was brought to a standstill as investors pulled back and stopped buying these loans. Monthly settlements of SBA loans fell precipitously and premiums on guaranteed SBA paper fell to unprecedented lows. As a result, banks had less capital to lend to small firms. This was a significant contributing factor to the precipitous decline in lending that occurred through FY 2009.

Stable and properly function secondary markets are essential to small business lending. As the small business loan secondary markets seized-up in September 2008, however, the SBA left entirely impotent. This was because the agency was unprepared to respond

to a serious decline in secondary market activity and lacked tools to restore confidence to investors in SBA loans. Without functioning secondary markets, however, other efforts to stimulate small business lending were significantly hampered.

The Administration has undertaken two efforts to stabilize and improve the deficiencies in SBA loan secondary markets. Neither effort has proven very successful. The Term Asset Backed Securities Loan Facility (TALF) administered by the Federal Reserve began in March of 2008 and allowed secondary-market investors to take out loans from the Federal Reserve on a non-recourse basis backed by high-quality debt instruments, such as the guaranteed portion of SBA loans. In this fashion, TALF is intended to provide additional liquidity for investors in debt that can be backed by the TALF. This program has proven of limited utility for stimulating the small business loan secondary market, however, as only 1.7 percent of all deals settled by the TALF since March have been for SBA-backed loans.

In March of 2009, the Treasury announced an additional proposal that was intended to restart stagnant secondary markets for SBA loans. Under this program, Treasury would use as much as $15 billion in funds appropriated by Congress under the Emergency Economic Stabilization Act of 2008 (EESA) and the Troubled Asset Relief Program (TARP) to make direct purchases of SBA loans from lenders. Since the announcement, however, not a single purchase has been made. Loan purchasers have been reluctant to take part because of concerns associated with TARP-related oversight and executive-compensation limits.

Congress took action in the American Recovery and Reinvestment Act to address this issue by providing the SBA with authority to provide loans to broker/dealers that purchase 7(a) small business loans. These loans would be fully secured by the borrowers' existing portfolio of SBA-backed loans and the proceeds from these loans could only be used to purchase small business loans from banks. Brokers/dealers in SBA loans would either hold the loans or pool them and sell them to investors. Congress also authorized the SBA to guaranty pools of first-lien loans made in conjunction with CDC financings.

ARRA provided the agency with emergency rulemaking authority to waive notice and comment requirements of the Administrative Procedures Act and implement the secondary market programs within 15 days of enactment. In the nine months since the enactment of ARRA, however, the SBA has not implemented the 7(a) Secondary Market Lending initiative or CDC Secondary Market Guaranty programs contained in the ARRA. Furthermore, the agency has expressed its intent to implement this program with interest rates dating back to the last quarter of FY 2008. These rates are significantly higher than what could be available today in the open market and will likely make the program cost-prohibitive and unworkable for the vast majority of broker-dealers the program was originally intended to help. These actions by the Agency are entirely counterproductive to the original intent of the secondary market initiatives and serve only to further frustrate efforts to improve small business lending.

Declines in SBA Lending

A growing number of businesses have struggled to secure loans through the SBA's flagship lending programs—the 7(a) program and the CDC program. Although both programs experienced modest declines beginning in 2002, when the program was first moved to zero-subsidy, the program's decline accelerated significantly in response to the collapse in the U.S. financial markets.[1] In FY 2008, volume in the 7(a) program declined by over 38 percent compared to the previous year. The total number of 7(a) loans made in FY 2008 fell by over 30,000 loans compared to the previous year, while over 2,000 fewer projects received CDC financing. These trends continued unabated in FY 2009, as the number of loans in both programs declined by over 35 percent compared to FY 2008, and total funds loaned fell by over $4.8 billion. This represented the largest two-year decline in the history of the program, with over 50,000 fewer loans being made and nearly $7.5 billion less in lending—a level not seen in nearly a decade.

The decline in SBA lending has been led in large part by an over-reliance and subsequent collapse in the SBA Express Loan subprogram. Since FY 2005, SBA lending has grown increasingly reliant upon activity in the SBA Express program for overall lending in the program. In FY 2008, 39,877 loans were processed through SBA Express in a total amount of $2.23 billion. This represented 57 percent of the total number of loans made under the 7(a) program, but only 18 percent of the total amount of money made available under the 7(a) program. Over the past year, however, there has been a significant increase in defaults on SBA Express loans. Increasing costs stemming from the rising defaults have been the single largest driver of costs for the 7(a) program, and are expected to push the program to a positive subsidy rate in FY 2010.

These trends are unsurprising given the structure of the SBA Express program. Because SBA Express loans provide a lower guaranty amount, these loans will entail more credit risk to lenders compared to conventional 7(a) loans. As a result, lenders making SBA Express loans may forego lending to less creditworthy borrowers and instead lend only to borrowers with the best credit. This is particularly true as economic conditions have worsened and lenders have had to contract credit standards significantly. As a result, the SBA Express program may be leading the 7(a) program short of its goal to make capital available to borrowers who may not otherwise qualify for funding in the conventional market.

Additionally, because SBA Express loans are capped at $350,000, an increase in the number of these loans may result in less capital actually being made available to businesses. This is problematic because small businesses must achieve a critical mass of capital in order to capitalize effectively. By falling short of necessary capital levels (i.e. at levels under $350,000) a business may actually be hampered.

The problems inherent to the SBA Express program, combined with the program's increasing defaults and projected positive subsidy rate, were the decisive factors why stimulus funds appro-

[1] In FY 2006, lending volume declined by three percent from volume from FY 2005. This was the first time in over a decade that loan volume decreased from one fiscal year to the next. This trend continued unabated in FY 2007, with loan volume falling 2.4 percent below its FY 2005 level.

priated under ARRA were not used to support increased guarantees or fee reduction subsidies in this program.

Rising Costs Are Unsustainable

With the enactment of H.R. 4818 in FY 2005, the Consolidated Appropriations Act, the cost of 7(a) loans increased significantly for both small business borrowers and lenders. The stringent zero-subsidy framework of this legislation caused borrower fees to double, with some businesses having to pay as much as $50,000 in upfront fees for a loan. Despite these fee hikes, program costs have continued to escalate. For fiscal year 2010, the 7(a) loan program will be unable to operate without a subsidy, with a projected subsidy rate of 0.46. This will require an appropriation of approximately $80 million to meet the requirements of the Federal Credit Reform Act of 1990. This flies in the face of what was originally promised with the program's shift to zero-subsidy in FY 2002, which was supposed to eliminate the need for further appropriations and provide authority for indefinite lending.

The CDC program is also facing significant rising costs in the near-term. Some of these costs stem from the current economic climate and the program's heavy concentration on lending for real estate projects, which are likely to see continued losses before the economy recovers. In order to keep CDC program fees acceptably low, substantial efforts must be made by SBA to minimize the actual loss, or charge-off, attributed to each defaulted loan. The SBA has a CDC loan portfolio of approximately $30 billion, but maintains a loan liquidation staff in its two servicing centers of fewer than 15 individuals. Additionally, this staff has no ability to travel to the locations where loan collateral is located in order to track borrowers, guarantors, or collateral. The SBA has not taken steps in the past year to delegate additional authority to the individual CDCs that make these loans (and which are located in the towns and cities in which the collateral is located) to perform workouts, liquidations, and recoveries on defaulted loans. Under such an arrangement, however, it would be imperative that the costs for liquidations be paid promptly by the SBA, a task that the Agency has had difficulty performing recently.

The rising costs of both the 7(a) and CDC programs have become particularly problematic in the current economic climate where credit availability has been pushed past historic lows. Congress made considerable efforts to restart lending through both programs by appropriating $375 million in P.L. 111–5—the American Recovery and Reinvestment Act of 2009—for the purpose of reducing fees on and increasing guarantees on 7(a) loans through FY 2010. Nonetheless, activity in both programs remains anemic, as reflected by the significant declines in lending activity in both 7(a) and CDC for FY 2009. If these programs remain correlated to wider conditions in the lending markets, the SBA will be unable to achieve its mission of making credit available to small businesses that are finding themselves shut out from traditional sources of capital.

Fewer Participants for SBA Programs

The SBA also continues to lose ground in attracting new lenders to participate in its lending and investment programs. In FY 2007, only 2,374 lenders participated in the 7(a) program. This rep-

resented a 16 percent decline in the number of lenders from FY 2003, when 2,840 lenders participated in the program. While a good deal of this decline may be attributable to the discontinuation of streamlined lending initiatives in FY 2005, much of the cause may stem from the challenges that small lenders have in entering the program. Much of this is due to compliance costs associated with SBA's loan regulations and the technical expertise needed to make an SBA loan.

The SBA's investing programs have also suffered from declines in participants over the past decade. In FY 2002 the SBA licensed 41 new SBIC funds, more than half of which were for early-stage investment. By contrast, in FY 2008 the SBA issued licenses for only six SBIC funds, only one of which was for a new fund (the other five being license renewals), and none of which were for investment in early-stage businesses. As a result, the SBA has been unable to expand the breadth and reach of the program, limiting the availability of equity financing to entrepreneurs that the program has traditionally served.

SBA has also been unable to bring new investment companies into NMVC and RFCI programs, limiting the availability of equity financing to entrepreneurs located in low-income areas or those that could contribute to the nation's renewable energy effort. To date, only six companies are participating in the NMVC program and the FY 2010 budget allocates no resources to bring more companies into the program. Additionally, the SBA has taken no action to date to implement the RFCI program. Agency support is crucial to ensuring that the NMVC and RFCI programs meet their full potential. These programs have significant potential to improve economic development in low-income communities and fuel small business innovation in the area of renewable energy, particularly since businesses in these sectors have experienced a loss of their small manufacturing and industrial economic base. Administrative mismanagement and protracted delays in their implementation, however, have squandered much of this potential.

Difficulty Reaching Underserved Businesses

In the spring of 2007, the SBA announced the establishment of a new 7(a) lending initiative for veterans known as the "Patriot Express (PE) Pilot Loan Initiative." Under this program, the SBA provides 7(a) loans for veterans and members of the military community wanting to establish or expand small businesses. In FY 2008, SBA made only 912 PE loans, accounting for less than two percent of all 7(a), and less than one percent of all dollars loaned. In addition to its lackluster performance, the continued reliance on Patriot Express has come at the expense of other programs that are aimed at increased access to capital for veteran-owned small businesses. The Increased Veteran Participation program was established by Congress in 2008 by P.L. 110–186, the Veteran Small Business Reauthorization and Opportunity Act of 2008. The Increased Veteran Participation program can function within the existing zero-subsidy policy of the 7(a) program, but carries significantly greater guarantees, loan sizes, and reduced fees for veteran borrowers. While no appropriation is necessary to implement this program, the SBA has yet to take action to implement the Increased Veteran Participation program.

Small businesses in rural areas have also continued to struggle with access to the SBA's lending programs. In January of 2008, the SBA introduced a new initiative under the framework of the 7(a) loan program known as "Rural Lender Advantage." This initiative was intended to accommodate the loan processing needs of small community/rural-based lenders that make few or no 7(a) loans by simplifying and streamlining the Agency's application process and procedures, particularly for smaller SBA loans. Like Patriot Express loans, however, RLA loans do not carry any material benefits for small businesses over standard 7(a) loans. In this sense, both Patriot Express and RLA are primarily enhanced delivery mechanisms with aggressive marketing campaigns which are unlikely to significantly improve lending businesses in these target groups.

SBA's ability to provide capital for socially and economically disadvantaged small business owners will likely be affected by recent changes to the Community Express program—a pilot program of the 7(a) loan loans. Because Community Express is a pilot program, it is subject to statutory limitations that prohibit the SBA from making more than ten percent of 7(a) loans through a pilot program. In FY 2009, however, the SBA altered the Community Express program by targeting the program to underserved geographies (e.g., low-income or underserved locations), as opposed to its prior focus on demographic groups (e.g., minorities, women, and veterans). This policy, however, is inconsistent with the program's original intent of serving individuals who have faced more difficulty in securing credit through the conventional markets. By focusing on geographic areas, the SBA has expanded the pool of eligible borrowers beyond the intended target groups of women, minorities, and veterans while leaving statutory ten percent limit on the program's volume undisturbed. This will likely result in fewer 7(a) loans going to the program's initial target groups and will likely affect the 7(a) program's overall success in lending to these individuals.

In addition to reaching target demographics through its lending programs, the SBA has also struggled to provide capital investment for minority entrepreneurs. In FY 2008 only 3.4 percent of all financings in the SBIC program went to small businesses that were majority black-owned. Only 1.22 percent of all SBIC investments went to small businesses that were Hispanic-owned and only 2.49 percent of SBIC investments went to women-owned businesses. Veteran-owned small businesses fared the worst, receiving only 0.12 percent of all SBIC financings. These figures represent a troubling performance for a program that was intended to focus on providing these groups with investment capital.

Legislation is also necessary to address the Administration's failure to leverage the program's inherent ability to provide investment capital to industries that have particular difficulty in acquiring equity capital. The additional investment capital provided by the SBA in the SBIC and NMVC programs facilitates smaller transactions that are more suitable to investments in smaller businesses and has the added benefit of making SBIC and NMVCCs less reliant on public market sentiment compared to the investments made by traditional venture capital firms. This is particularly important to facilitating investment in small businesses in

struggling industries and low income areas that have difficulty attracting private capital.

Inability To Support Early-Stage Businesses

In 2004, the participating securities program ceased issuing new leverage commitments. This was largely the result of a decision to move the program to zero-subsidy in 2001, which was fundamentally unsuited to a program that functioned on patient equity investment in long-term assets. As a result, the program was essentially rendered insolvent by 2005 when the administration requested no program funding for the participating securities portion of the SBIC program in its annual budget. This policy was continued through the FY 2010 budget.

By eliminating the participating securities program, however, the SBA has become completely reliant on debt-based programs, which are more suited to providing later stage, expansion capital to cash-flow-positive businesses. This has particularly hampered investment in early-stage and capital-intensive small businesses, which lack the resources to service heavy debt investment. According to SBA studies, the total unmet need for early-stage equity financing for small businesses is about $60 billion annually.

Beginning in the last quarter of 2008, investments in early stage businesses plunged to $5.4 billion, a drop of 26.4 percent from the prior quarter and 33.2 percent from the fourth quarter a year earlier. Several factors have contributed to this downturn, particularly the frozen markets for initial public offerings—there were only six nationally in the last year. The end result of these trends has been a significant decline in funding for small businesses and early stage companies. This is particularly troubling since these are precisely the types of businesses that have historically driven innovation and growth in the U.S. They are a keystone of U.S. competitiveness and will be integral to creating new jobs and driving growth as the economy exits this recession.

In the current economic environment, however, many entrepreneurs have been unwilling to take on new business enterprises, reasoning that opportunities for capital are scarce. Today, the SBA is entirely reliant on debt-based programs to overcome the difficulties that small firms encounter when seeking capital. These debt-based programs, however, are more suited to providing later stage, expansion capital to businesses with positive cash-flow that can be used to make regular payments on debt. As a result, the gap for investment in early-stage and capital-intensive small businesses, which lack the resources to service heavy debt investment, has grown wider, and this critical component of the small business community has continued to be underserved by existing government programs.

III. HEARINGS

In the 111th Congress, the Committee on Small Business held six hearings to examine the issue of small business access to capital, the SBA's capital access programs, and related legislation.

On March 26, 2009, the Small Business Committee, Subcommittee on Oversight and Investigations held a hearing to examine issues related to investment in small businesses, with particular emphasis on how prevailing economic conditions have af-

fected investment in small firms. Witnesses in this hearing explained how the current recession has aggravated the need for investment funds, particularly for equity investing in small firms, and how new federal initiatives could allay those needs. Additionally, this hearing explored numerous setbacks to the SBA's investment programs that have dramatically reduced the amount of investment in early stage and startup businesses and have inhibited the flow of venture capital to small businesses in general.

The full Committee subsequently held a hearing on June 10th, 2009, to examine the challenges facing the full array of the SBA's capital access programs. The Committee received testimony on issues facing the 7(a), Certified Development Company (CDC), Small Business Investment Company (SBIC), New Markets Venture Capital (NMVC), 7(m)/Microloan, and Renewable Fuels Capital Investment (RFCI) Company programs. Witnesses at this hearing discussed various deficiencies affecting the efficacy of these programs and proposed steps that could be taken to better meet the SBA's capital access mission.

The Small Business Committee, Subcommittee on Regulations and Healthcare held a hearing on June 22, 2009 to discuss the financial challenges that solo and small group health practices face in adopting health information technology (HIT). In particular, witnesses provided testimony on the dislocations between capital costs and returns on investment that discourage greater uptake of HIT assets by small health providers.

On Thursday, July 23, 2009 the Small Business Committee, Subcommittee on Finance and Tax held a hearing to examine proposed legislative initiatives to address deficiencies in the SBA's lending and investment programs that had been identified by previous hearings before the Committee. Witnesses at this hearing discussed several legislative proposals that would make a number of important reforms to the SBA's existing programs and establish new programs that will help close the gap for equity investment that was left when the SBA's investing programs were curtailed.

On Thursday, October 8, 2009, the Small Business Committee, Subcommittee on Finance and Tax held a markup of legislation affecting the SBA's capital access programs, including the 7(a), CDC, Microloan, SBIC, NMVC, and Disaster loan programs.[2] These bills would also establish a new lending program to provide reduced cost capital to small medical practices that purchase health information technology and new equity investing program under the SBA.

[2] This included H.R. 3723, The Small Business Credit Expansion and Loan Markets Stabilization Act of 2009, which was introduced by Rep. Halvorson (IL) to make improvements to the 7(a) loan program; H.R. 3739: The Job Creation and Economic Development Through CDC Modernization Act of 2009, which was introduced by Rep. Buchanan (FL) to update the CDC program; H.R. 3737: The Small Business Microlending Expansion Act of 2009, which was introduced by Rep. Ellsworth (IN) to improve the Microloan program; H.R. 3740: The Small Business Investment Company Modernization and Improvement Act of 2009, introduced by Rep. Leutkemeyer (MO) to streamline and expand the SBIC program; H.R. 3722: The Enhanced New Markets and Expanded Investment in Renewable Energy for Small Manufacturers Act of 2009, introduced by Rep. Kirkpatrick (AZ) to expand the NMVC and RECI programs; H.R. 3014: The Small Business Health Information Technology Financing Act of 2009, introduced by Rep. Dahlkemper (PA) to create a new lending program to make capital available for small health practices to purchase health information technology; H.R. 3738: The Small Business Early Stage Investment Act of 2009, introduced by Rep. Nye (VA) to create a new equity investment program at the SBA; and H.R. 3743: The Small Business Disaster Readiness and Reform Act of 2009, introduced by Rep. Griffith (AL) to make necessary improvements to the SBA's Disaster assistance program.

These bills were reported to the full Committee by voice vote with no amendments.

The full Committee subsequently held a hearing on October 14th, 2009, to review proposed legislation to address deficiencies in the SBA's lending and investment programs that had been identified by previous hearings before the Committee. Witnesses at this hearing expressed their support for several legislative proposals to reform the SBA's existing programs and establish new programs that will help close the gap for equity investment. These proposals ultimately became the basis for H.R. 3854.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session on October 21, 2009 and ordered H.R. 3854 reported to the House by voice vote. No amendments were offered during the markup.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. As noted in the comprehensive description of the markup above, no recorded votes were conducted. A motion by Ms. Velázquez to report the bill to the House with a favorable recommendation was AGREED to by a voice vote at 10:41 a.m.

VI. SECTION-BY-SECTION ANALYSIS OF H.R. 3854

Section 1. Short title; table of contents

This provision sets a short title for the Act as "Small Business Financing and Investment Act of 2009"

TITLE I—SMALL BUSINESS LENDING ENHANCEMENTS

Section 101. The small lender outreach division

This provision will direct the Administrator to establish a program within an existing office to support regional SBA offices in assisting small lenders who do not participate in the preferred lenders program (PLP) to make 7(a) loans. The Committee intends for this program to be established in an existing element of SBA and does not intend for a new division to be created for this purpose.

The Committee believes that this program will encourage more non-PLP lenders to participate in the 7(a) program, particularly community banks and lenders located in rural areas.

Section 102. The rural lender outreach program

This provision would establish an SBA lending program focused on lending to small businesses located in rural areas. The program would be administered by the Small Bank Outreach Division established under this bill. The RLO program would improve upon conventional 7(a) loans to encourage increased lender participation in the 7(a) program, reducing application burdens for borrowers and lenders in rural areas, by expediting the lending process, and enhancing loans made under this program by increasing the guarantee to 90 percent on amounts up to $250,000. Loans made under this program would use abbreviated application and documentation

requirements and require the SBA to approve or decline the loan within 36 hours.

The Committee believes that this program will help alleviate the trend of declining lender participation in the 7(a) program, particularly among lenders in rural areas. The Committee anticipates that this program can increase lender efficiency and reduce the cost of processing 7(a) loans for the SBA, lenders, and borrowers, thereby encouraging greater participation. The Committee does not, however, believe that abbreviated application and documentation requirements should result in lower underwriting standards. The Committee intends for loans made under this program to remain consistent with prudent banking practices and that lenders should continue to follow established and proven internal credit review and analysis procedures for loans of similar size and type. To ensure that this occurs, the Committee intends for the SBA to establish minimum credit standards as it feels necessary to limit the rate of default on loans made under this program.

Section 103. Community Express program made permanent

This provision would make the Community Express pilot program permanent. The program will provide loans to businesses majority owned by women, socially or economically disadvantaged individuals, or U.S. military veterans without regard to their geographic location.

The Committee believes that lenders participating in the program should be allowed to use, to the maximum extent possible, their own loan analyses, loan procedures and loan documentation. This includes their own application forms, internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. However, in using their documents and procedures, the Committee intends for lenders to continue to follow established and proven internal credit review and analysis procedures for loans of similar size and type.

Over the past five years, the SBA has relied on the Community Express pilot program as a key mechanism for making loans to these businesses. The Committee believes that this program must be maintained given the decline in both the number and dollar amount of loans that the SBA has made to these groups. From FY 2007 to FY 2008, the number of 7(a) loans made to minority-owned businesses declined by over 33 percent, while the number of loans made to women-owned businesses declined by 29 percent. During the same time period, the number of 7(a) loans to veteran-owned businesses declined by more than 22 percent.

Under the Community Express program, borrowers must receive technical and management assistance ("T.A.") prior to and following loan closing from a local non-profit provider or from the participating lender. The technical assistance must be coordinated, arranged and, when necessary, paid for by the lender. To encourage participating lenders to aggressively address the targeted businesses, and to offset some of the additional costs associated with the technical assistance component, SBA's loan guaranty under the pilot program is the same as under the regular 7(a) program—a maximum of 85% on loans up to $250,000.

The Committee intends for the Community Express program to follow collateral standards that the SBA promulgated under the ex-

isting pilot program. For this reason, the SBA shall not require lenders to take collateral for loans less than $25,000. This provision does not, however, require that loans under $25,000 be uncollateralized. To the contrary, a lender may require collateral on loans of $25,000 or less if they feel a particular loan so warrants. This provision will simply preclude the SBA from setting collateral requirements on loans of $25,000 or less. This provision is intended to streamline the lending process, particularly in situations when collateral may be unnecessary.

Section 104. Increased Veteran Participation Loan Program made permanent

This provision would amend the Increased Veteran Participation Program (IVPP) under section 7(a)(32) of the Small Business Act to permanently establish this initiative as a sub-program of the 7(a) Loan Program. This section will also provide permanent authority to reduce fees on IVPP loans by half and increase the guarantee to 90 percent for loans made to veteran-owned small businesses. The Committee believes that this program will significantly ameliorate the declining numbers of military veterans participating in the 7(a) program, particularly at a time when more veterans are returning from active deployments in Iraq and Afghanistan and are seeking capital for their small businesses.

Because this program does not displace the zero subsidy policy governing the 7(a) program, the Committee intends for it to be fully implemented irrespective of whether an appropriation is made available to the program. In the event that the 7(a) program reaches positive subsidy, however, the Committee expects the SBA to identify and eliminate non-permanent loan programs before exercising discretion of not operating the IVPP. Additionally, it is the Committee's expectation that the permanent establishment of the IVPP program would eliminate the need for the superfluous Patriot Express pilot program and that this program would be discontinued.

Section 105. Leasing policy

This section will clarify permissible uses of 7(a) financings for facilities that will subsequently be leased by the small business concern. Under this provision, a 7(a) program loan may be used to acquire or construct a facility, so long as the small business concern receiving the loan permanently occupies no less than 50 percent of the project property and may temporarily lease no more than 50 percent of the project property

Section 106. National lender training program

This section would require the SBA's ten regional offices to carry out a lender training program to train new and participating lenders on SBA's lending systems, policies, and procedures. Costs for this program can be covered by fees, and the program cannot be contracted out to non-governmental entities.

The Committee believes that the role of program training and lender education is properly the purview of the SBA and that lenders should not seek private training courses or seminars to train employees on SBA program policies and procedures. At a minimum, the Committee would expect every lender participating in

an SBA lending program to have at least one employee complete SBA training and that continuing education for SBA participants be available on an annual basis.

This section also reiterates existing laws which limit participation in the SBA's capital access programs to entities that engage solely in lending, investment, or entrepreneurial development or in activities incidental to the business of lending, investing, or small business entrepreneurial development. The Committee does not intend for this language to make any material change to the entities that currently participate in these programs.

Section 107. Applications for repurchase of loans

This section shall require the SBA to make prompt payment on repurchase applications, and to make a final determination to approve or deny a complete repurchase application within 45 days of receipt. Applications not receiving a final determination within 45 days shall be deemed approved.

The Committee does not intend for this provision to require the SBA to pay fraudulent or improperly issued guarantees. The Committee intends for this provision to eliminate the practice of partial guaranty payments or complete guaranty denials that are based upon immaterial or technical deficiencies in the loan application, approval, or servicing process. Additionally, the Committee believes that partial or complete denials should be exceedingly rare in instances where the SBA has had an opportunity to review and approve a guaranty prior to its issuance. This provision is intended to ensure that the SBA provides greater certainty for the guarantees that lenders rely upon when making 7(a) loans. In recent years, untimely payments and denials on guaranty purchases have all but eliminated the meager margins that lenders relied upon to economically justify participation in the 7(a) program.

Section 108. Alternative size standards

This provision will provide a simplified and straightforward standard for determining small business loan eligibility. The Committee believes that this provision will encourage greater lender participation in the 7(a) program. At a minimum, the standard must include businesses' maximum tangible net worth and average net income as factors upon which the size determination is based.

The Committee intends for the simplified size standard to be set by the SBA, thereby giving the SBA the opportunity to ensure that this standard addresses any of the concerns it feels necessary. Until that standard is adopted, however, the Committee intends for the SBA to use the size standard that currently exists for the 504 program.

Section 109. Pilot program authority

This section would limit the maximum number, term, and dollar amount of SBA pilot programs, and would require that any new pilot programs, or any changes to an existing pilot program, be made pursuant to the notice and comment rulemaking provisions of Section 553(b) of Title V of the United States Code.

The Committee believes that no material changes to the SBA's lending and investment programs should be made without the notice and comment rulemaking procedures established under the Ad-

ministrative Procedures Act. This includes changes to informal program guidance or SBA standard operating procedures that would affect the way in which SBA loans are applied for, approved, or processed. Additionally, the Committee intends for this provision to curtail the SBA's ability to establish new programs or delivery mechanisms for SBA loan programs without explicit statutory authority, particularly when Congressionally mandated programs remain unimplemented.

Section 110. Loans to cooperatives

This section will simplify the eligibility requirements for cooperatives to receive 7(a) loans by permitting any cooperative that is not organized as a tax exempt entity, which is engaged in a business activity, that offers its goods or services to the public, and that obtains financial benefits for itself as an entity as well as for its members.

The Committee intends for this language to eliminate the SBA's current distinctions between "consumer," "marketing," and "producer" cooperatives. The Committee also believes that the SBA's practice of looking primarily at an entity's tax filing status to determine eligibility for SBA loans should be discontinued, as this factor is not dispositive in determining whether an entity is a business or not. The language in this provision is intended to expand eligibility for SBA loans to small businesses that are organized as cooperatives. The Committee believes that the SBA's treatment of cooperative businesses should be no different than the treatment given other businesses. The cooperative must still be deemed eligible under the SBA's size standards, and if any of its members are business entities, they must also meet the SBA's size standards.

Section 111. Capital Backstop program

Under this section, the SBA would be required to establish a process by which potential borrowers submit loan applications directly to the agency. The SBA would then be authorized to engage in application processing and preliminary underwriting of these applications before forwarding the applications to private sector SBA lenders within 100 miles of the principal office of the potential borrower. If no such lenders approve these loan applications and undertake the loans, the SBA is required to provide such applications to preferred SBA lenders nationwide. If after 60 days no private sector lender approves these loans, the SBA is authorized underwrite, close, and fund the loan.

The SBA would then be required to offer closed and funded loans to the private sector through asset sales convened semi-annually. The SBA is authorized to contract with private sector vendors for due diligence, asset valuation, and other services related to the asset sales. The SBA would be prohibited from selling loans for less than 90 percent of the net present value, as determined and certified by a qualified third-party entity, of such assets through the asset sales. For loans that were unable to be sold through the asset sales, the SBA would be required to maintain and service such loans.

This program will be subject to the Federal Credit Reform Act of 1990, meaning that it will carry sufficient fees to reduce the cost to zero and that the program level for lending would be indefinite.

The program would also only take effect in the event that the Bureau of Economic Analysis has determined the U.S. gross domestic product has declined for three consecutive quarters and that the annual program level volume in the SBA's 7(a) loan program has declined by 30 percent or more compared to the same time in the previous fiscal year.

It should also be noted, however, that the SBA would be required to apply the existing eligibility and credit underwriting criteria that are used for 7(a) loans, thus avoiding any adverse selection for SBA loan-making. In fact, the SBA backstop portfolio should carry no more risk than that of a 7(a) private sector lender. Additionally, total program level in the Capital Backstop program would be identical to the annual program level of the 7(a) program, meaning that the program would not entail any increased exposure beyond levels already contemplated in the annual 7(a) program level authorization. Finally, to avoid any undue burden on the SBA's other programs, the Capital Backstop program would be carried out using a reserve cadre that is skilled and trained to make loans.

Section 112. Loans to finance goodwill

Under this provision, the SBA would be prohibited from applying disparate application, processing, or approval standards on loans used to finance goodwill.

Section 113. Appellate process and ombudsman

This section would establish an Office of the Agency Ombudsman within the SBA. The Agency Ombudsman would be organized around the principle of dispute resolution within the SBA's various lending and investment programs. This office would be established to ensure that the private sector partners that administer the SBA's programs receive fair and expeditious resolution of their complaints. The Ombudsman would report directly to the Administrator and would serve as an objective arbiter to resolve appeals independently of the SBA's program administration offices through a separate appeals process. This process is designed to provide participants with an independent, fair, and confidential means of settling disagreements that can arise from the SBA's oversight or decision making functions. This would enable program participants to make informal inquiries or file formal appeals in the strictest confidence without fear of retaliation.

Section 114. Extension of recovery and relief loan benefits

This section would extend the increased guarantees and eliminated borrower fee provisions that were established under Sections 501 and 502 of the American Recovery and Reinvestment Act of 2009 through the end of fiscal year 2011, providing small businesses and lenders with continued support to make capital available as the economy recovers. The Committee intends for this to serve solely as a prospective extension of authority to continue these benefits through September 30, 2011 and should not be considered as having any effect on the existing operation of the program.

It is the Committee's intent that borrowers remain the primary beneficiaries of the fee reduction and that funds appropriated for fee reduction first be used to the maximum extent practicable to re-

duce fees for borrowers before being used to reduce fees paid by lenders. If there are insufficient funds to eliminate borrower fees entirely throughout the authorization period, the agency should adjust the borrower fees upward to conserve funds and effect a fee reduction through the end of the stimulus period for borrowers only. This is the only approach intended by the Committee to give full effect to the language which provides small business borrowers with priority over lenders in receiving this vital relief. Additionally, the Committee intends for the increased guaranty to be applied uniformly for all loans made under Section 7(a) regardless of the size of the loan, purpose of the loan proceeds, or size of the institution making the loan. The sole exception for these benefits should be for loans made under SBA Express, which should not carry either the increased guaranty or the reduced fees.

Section 115. Reduced documentation for Business Stabilization loans

This provision will streamline and improve the application process for Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) by requiring the SBA to develop a single page application for these loans and reduced documentation requirements by permitting lenders to apply documentation and processing procedures that the institution uses for loans of similar size and purpose. The Committee intends for this provision to significantly reduce the burden on borrowers seeking ARC loans following the enactment of this provision. The new application process and revised documentation standards should not affect existing or pending loan applications, but should only be prospectively applied for new loans. Additionally, the Committee does not intend for the reduced documentation requirements to result in significantly lower underwriting standards. The Committee intends for loans made under this program to remain consistent with prudent banking practices and that lenders should continue to follow established and proven internal credit review and analysis procedures for loans of similar size and type.

Section 116. Expanded eligibility for Business Stabilization loans

This provision will expand the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) to permit loan funds to be used for the purpose of making payments of principal and interest on loans that are guaranteed by the Federal government. This would include the payment of principal and interest on any preexisting SBA guaranteed loan. The Committee does not intend for the expanded uses of loan proceeds to affect existing or pending loan applications, but should only be prospectively applied for new loans approved or made after the date of enactment.

Section 117. Increased amount for Business Stabilization loans

This provision will increase the maximum loan size for the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) from the current level of $35,000 to $50,000. The Committee does not intend for these larger loan

amounts to affect existing or pending loan applications, but should only be prospectively applied for new loans approved or made after the date of enactment.

Section 118. Extension of Business Stabilization loans

This provision will extend the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) through the end of fiscal year 2011. The Committee intends for this extension to serve solely as a prospective extension of authority to continue this program through September 30, 2011 and should not be considered as having any effect on the existing operation of the program.

Section 119. Secondary Market Lending Authority made permanent

This section would make the Secondary Market Lending Authority established under Section 509 of the American Recovery and Reinvestment Act of 2009 permanent, providing the SBA with permanent authority to make liquidity available to brokers and dealers who purchase and sell SBA 7(a) loans, thus stabilizing this vital component of the small business lending market.

Section 120. SBA Secondary Market Lending Authority expanded

This section would amend the Secondary Market Lending Authority established under Section 509 of the American Recovery and Reinvestment Act of 2009 to permit any 7(a) lender to apply for and receive loans authorized by this section. Additionally, the Secondary Market Lending Authority is amended to provide the SBA with authority to use appropriated funds for the purpose of reducing the cost of loans made under this program.

Section 121. Increased loan limits

This provision will increase the maximum gross loan amount for 7(a) loans from the current level of $2 million to $3 million. The Committee does not intend for there to be any increase in the total amount of these loans that the SBA guarantees.

Section 122. Real estate appraisals

This section would require an appraisal by a licensed or certified appraiser for any 7(a) financing secured by commercial real estate with an estimated value in excess of $400,000. The Committee does not, however, intend for these increased limitations on real estate appraisals to result in lower underwriting standards. The Committee intends for loans to remain consistent with prudent banking practices and for lenders to continue to follow established and proven internal credit review and analysis procedures for loans of similar size and type.

Section 123. Additional support for express loan program

This provision will permit the SBA to retain a 25 basis point fee that is currently charged and retained by lenders on all 7(a) loans. The Committee intends that lenders making SBA Express loans should remit this portion of the fee to the SBA and that the SBA use this additional fee to bring the 7(a) program within zero sub-

sidy. The Committee does not intend for the SBA to retain this fee in any other type of loan made under Section 7(a).

Section 124. Authorization of appropriations

This section would authorize a program level of $17.5 billion in the 7(a) loan program through fiscal year 2011.

TITLE II—CDC ECONOMIC DEVELOPMENT LOAN PROGRAM

Subtitle A—General provisions

Section 201. Program levels

This section will authorize the 504/Certified Development Company Program levels at $9 billion in financings in fiscal year 2010 and $10 billion in financings in fiscal year 2011. These levels should be adequate given current and projected levels of program activity.

Section 202. Definitions

This provision codifies the definition of a Certified Development Company (CDC) as a company which the SBA has determined meets the criteria of the new section 506 of the Small Business Investment Act of 1958 (SBIA). The Committee believes that this change is necessary because the SBIA does not define CDCs in general terms.

Subtitle B—Certified Development companies

Section 211. Certified Development companies

This provision specifies criteria that a development company must meet in order to issue debentures. A CDC must have fewer than 200 employees and must serve its local community by fostering economic development, creating and preserving jobs, and stimulating private community investment. Except for CDCs certified prior to January 1, 1987, CDCs must operate as not-for-profit entities and must maintain good standing with all laws, including taxation requirements, in their state of incorporation. This provision will also establish requirements for CDC membership and will require that CDCs be professionally managed and maintain a board of directors that represents its membership.

This provision will require CDCs to maintain a directorate with ties to the states in which it operates. It also imposes ethical requirements on CDCs and their employees, including a prohibition on persons serving as an officer, director or chief executive officer of more than one certified development company.

Section 213. Accredited lenders program

This provision codifies the existing accredited lenders program, which CDCs that meet the accreditation criteria must follow in order to participate in the ACL program, which permits skilled, experienced, and well staffed CDCs in good-standing to make loans with accelerated approval and closing times.

Section 214. Premier Certified Development Program

This provision codifies the existing Premier Certified Development Program (PCL) by which accredited lenders can make completely delegated loan decisions.

Section 215. Multi state operations

This provision establishes criteria for subsequent development company expansion which requires that each additional State be contiguous to the State of incorporation, and requires the CDC to add to its membership in the State of incorporation at least 25 members from each additional State, and must add to its board in the State of incorporation at least one member from each additional State.

Section 216. Guaranty of debentures

This provision codifies the existing authority for the SBA to issue guarantees for the full amount of CDC debentures issued under the program as well as the fee structure which sets the program subsidy at zero. It would also change the existing law to provide borrowers in the 504 program with the option to include loan and debenture closing costs, other than borrower's attorney fees, in the debenture. The Committee believes that this provision will improve efficiency and convenience in the 504 program and result in increased participation in the program.

Section 217. Economic development through debentures

This section codifies the economic development mission that is central to the CDC program. Among these objectives, this provision will allow the ownership interest of two or more owners to be combined to determine whether the small business is at least 51 percent owned by minorities, women or veterans in order to qualify for assistance as a public policy goal. The Committee believes that this change is consistent with the 504 program's existing provision which permits small businesses to qualify as a public policy goal for 504 program financing by majority ownership of a single woman, minority, or veteran.

This provision also designates financings in areas eligible for investment under the New Markets Tax Credit Program as a public policy goal under the 504 program, thus making these financings eligible for a larger maximum debenture limit. The Committee believes that this change is consistent with the 504 program's existing purpose of fostering community development and economic investment.

This effort would also permit 504/CDC project financings to be used to acquire the stock of a corporation, so long as the amount of the financing used to acquire stock does not exceed the fixed asset value attributable to such assets.

Section 218. Project funding requirements

This section would increase the maximum loan sizes for 504/CDC financings from $3.75 million for conventional projects and $5 million for projects that meet the public policy goals in the Small Business Investment Act to $7 and $10 million respectively. These increases are commensurate with the rate of inflation since the maximum loan sizes were last established.

This provision would also increase the maximum loan sizes for financings for projects that improve energy efficiency, produce renewable energy, or fund small manufacturing to $20 million. Businesses located in New Markets (i.e. low income) areas could receive a maximum financing of $12.5 million, and the provision would also create new financing of up to $25 million for small businesses that constitute a major source of employment.

This provision will also enable borrowers to provide more than the required minimum amount of equity and to use the excess equity to reduce the amount of the first mortgage loan, as long as the amount of the first mortgage loan would not be reduced to less than the amount of the SBA guaranteed portion of the loan. The Committee intends for this change to enable high-risk borrowers or start-up businesses to lower the costs associated with 504 financings. Additionally, the Committee believes that this provision will permit more borrowers to qualify for financing in the 504 program.

This section will clarify permissible uses of 504 financings for facilities that will subsequently be leased by the small business concern. Under this provision, a 504/CDC program loan may be used to acquire or construct a facility so long as the small business concern receiving the loan permanently occupies no less than 50 percent of the project property and may temporarily lease no more than 50 percent of the project property.

A CDC borrower will also be able to obtain financing in the maximum amount permitted under the 504 program and also to obtain a 7(a) loan in the maximum amount permitted under that program. This provision will provide entrepreneurs with increased access to affordable capital in amounts necessary to support capital intensive small businesses. This is consistent with the express purpose of the 7(a) and 504 programs, particularly since no existing SBA program can adequately fulfill this role by itself.

This section makes a conforming amendment to make the uniform leasing policy contained within the Small Business Investment Act consistent with the policy established by this act within the Small Business Act. This would require an appraisal by a licensed or certified appraiser for any 504/CDC financing secured by commercial real estate with an estimated value in excess of $400,000.

Section 219. Private debenture sales and pooling of debentures

This provision codifies the existing authority by which the SBA pools and sells debentures issued under the program with full guarantees on trust certificates issued from the pools.

Section 220. Foreclosure and liquidation of loans

Because the CDC program operates as a zero subsidy program, it is essential that defaulted loans be liquidated and recovered in an effective and timely manner. This provision will require a CDC to either foreclose and liquidate defaulted loans which it made or to contract with a qualified third-party to do so. This provision also imposes a requirement that SBA reimburse a CDC for all expenses incurred by the CDC if the expenses were approved by SBA in advance or were reasonable. The requirement will not be effective,

however, until the SBA adopts and implements a program to compensate and reimburse the CDC for expenses associated with foreclosure and liquidation. This section will strengthen the CDC program by permitting CDCs to play an active role in ensuring that defaulted CDC loans are liquidated in an efficient manner.

This provision would also provide continuing delegated authority for the central servicing agent to continue to collect and disburse funds or payments received on defaulted loans.

Section 221. Reports and regulations

This provision will require the SBA to complete annual reports on the PCL program, the liquidation efforts of the agency, and the number of CDC project financings made in combination with 7(a) loans.

This provision would also require the SBA to comply with the notice and comment rulemaking provisions of the Administrative Procedures Act before amending any regulation affecting the CDC program.

Section 222. Program name

This provision would establish the official title of the program as the CDC Economic Development Loan Program and require the SBA to modify all references to the program to conform to this change. The Committee believes that this change will clarify that loans made under section 504 of the Small Business Investment Act of 1958 may be used for the purpose of stimulating community economic development.

Subtitle C—Miscellaneous

Section 231. Report on standard operating procedures

This provision would require the SBA to prepare a report with 180 days of enactment of the Act that identifies the regulatory authority for which each standard operating procedure affecting the CDC program has been issued.

Section 232. Alternative size standard

This provision would require the SBA to conduct a report and study on the efficacy of the current alternative size standards of the CDC program.

TITLE III—MICROLOAN PROGRAM

Section 301. Microloan credit building initiative

Under this section, the SBA will require Intermediaries to transmit credit reporting information on Microloan program borrowers to one of the major credit reporting agencies. These credit bureaus are Experian, Equifax, and Transunion. The Committee intends that the SBA help Intermediaries in the program to devise a method of providing and recording such records with the credit agencies. The SBA will have discretion to determine whether to aggregate and report the data itself, or to negotiate agreements for the intermediaries to collect the necessary information and report directly.

The Committee believes that the inability of micro-intermediaries to provide borrower information to credit reporting agencies limits the potential of many low-income borrowers to improve and

strengthen their credit history, which further limits their access to affordable capital and their future success. Because most micro-intermediaries have small portfolios of loans and only brief repayment records, the cost of reporting microloan histories to major credit bureaus is often impractical. The Committee intends for the SBA to undertake to overcome this barrier and help borrowers in the Microloan program establish credit with the loans they receive under the program.

Section 302. Flexible credit terms

This provision would remove existing requirements that all microloans be "short-term." The Committee intends for this provision to provide lenders with authority to offer more flexible loan instruments to entrepreneurs, particularly with longer-term loans or revolving lines of credit. These potentially longer term loans would allow lenders to adjust the term to the specific needs and sophistication of the borrower enhancing participation in the program, particularly among seasonal businesses or borrowers that rely upon revolving credit. With greater flexibility in repayment terms, borrowers have greater control to manage their debt obligations, which can potentially enhance their profitability and success.

Section 303. Increased program participation

This provision would broaden the eligibility requirements for micro-intermediaries to help expand access to the Microloan program. This section would permit participation from micro-intermediaries that have at least 1 year of experience making microloans to startup, newly established, or growing small business concerns, or that have a full-time employee who has not less than 3 years experience in managing a portfolio of loans to startup, newly established, or growing small business concerns and who also has at least 1 year experience providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers. Microlending experience should include, but is not limited to, management or oversight of a loan fund. Microlending experience may also include requirements as per the discretion of SBA.

The Committee intends for this provision to increase the number of intermediaries that can qualify for the program with no reduction in the quality and experience of participating Intermediaries. If an aspiring intermediary (generally a non-profit organization) has no direct experience in microlending and technical assistance, then it can hire trained employees with considerable, equivalent experience and still qualify to participate in the program.

Section 304. Increased limit on intermediary borrowing

Under this section, the maximum obligation for participating intermediaries to the SBA may not exceed a total of $7 million, an increase from the current statutory limit of $3.5 million. In appropriate cases, the Administrator will have discretion to increase the limit to $10 million for qualified and experienced intermediaries (i.e. those that have been in existence for more than a year), and first-year Intermediaries, will have their maximum cap increased from $750,000 to $1 million.

The Committee is aware that the tightening credit market has significantly multiplied the need for access to capital—particularly among entrepreneurs whose credit scores may have been hurt by job loss or foreclosure. Currently, however, large Intermediaries have increased demand for Microloans, but have had their lending capacity constrained by existing program limits. The Committee intends for this provision to provide these intermediaries with additional borrowing power under the program to increase the number and size of microloans that they make available to small businesses.

Section 305. Expanded borrower education assistance

This provision would increase the percentage of the technical assistance grant that a micro-intermediary can spend on providing information and technical assistance to small business concerns that are prospective borrowers. The limitation is currently 25 percent. This provision would increase that amount to 35 percent. This section also increases the percentage of the technical assistance grant that a micro-intermediary can use for the provision of technical assistance through third-party providers—from 25 percent to 35 percent.

The Committee intends that these provisions, taken together, will greatly increase the amount that micro-intermediaries use to provide borrowers with training, financial education, and guidance. This ultimately reduces the risk of loss in the program and helps micro-intermediaries serve more borrowers while tailoring their service to the borrower's specific needs.

Section 306. Interest rates and loan size

This section would increase the required average loan size that Intermediaries must meet to qualify for subsidized interest rates under the program from the current level of $7,500 to $10,000. The Committee intends for this provision to result in larger loan amounts flowing to small businesses that borrow under the program.

Section 307. Reporting requirement

This section will require the SBA to make an annual report to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship that contains information on the Microloan program. At a minimum, this report should contain information regarding the number and dollar amount of loans made under the program, the number of jobs created or retained under the program and a break-down program performance by number and dollar amount of loans made to women, veterans of the U.S. military, and minority-owned businesses. These statistics should be further broken down state-by-state as well as by each intermediary that participates in the program. This report should also contain information on the number of business enterprises that received a microloan and that subsequently achieved success.

Currently, very little information is available on the Microloan Program. This dearth of data makes it difficult for the microenterprise field to focus on areas of improvement and efficiency.

Section 308. Surplus interest rate subsidy for businesses

Under this section, the Administrator will be authorized to use surplus funds for the purpose of reducing the interest rates paid by entrepreneurs who borrow from Intermediaries if, at the beginning of the third quarter of a fiscal year, the Administrator determines that any portion of any amount made available to carry out the 7(m) program, whether for loan making or technical assistance, is unlikely to be used during that fiscal year. While the SBA has discretion to determine the timing and structure of this supplemental subsidy for borrowers, the Committee believes that this can either be done by using the funds in a single interest rate buy down, or by applying the funds to subsidize the interest payments of borrowers. The SBA will also have discretion to determine whether this benefit will be available for all borrows, or only some.

The Committee intends that this provision enable the SBA to fully utilize all funds that are appropriated for the Microloan program. Through this authority, the Committee does not expect Microloan funds to go unspent in any fiscal year.

Section 309. Authorization of appropriations

This section would authorize the SBA to make $110 million in loans under the Microloan program and provide $80 million in technical assistance grants for each of fiscal years 2010 and 2011.

TITLE IV—SMALL BUSINESS INVESTMENT COMPANY PROGRAM

Section 401. Increased investments from states

This section would raise the current cap on the amount that state funds can invest in SBICs from 33 percent to 40 percent. This is particularly important given the current economic climate and the demand from state entities for safe and sound investment vehicles. This would also have the added benefit of increasing the amount of capital available for SBIC investment in small businesses.

Section 402. Expedited licensing for experienced applicants

The existing licensing process is perhaps the single-greatest impairment to the SBIC program. The licensing and relicensing process has become so cumbersome that many successful SBICs leave the program rather than deal with the arduous and lengthy task of SBA licensing. In FY 2008, only 6 SBICs were licensed, marking a more than 90 percent decrease in the number of licensees from the peak of the 1990's. Only one of these was for a new SBIC fund. The remaining five were license renewals for successful funds already participating in the program, and several of these renewals took over a year to complete.

This section will create an expedited licensing process as an incentive to keep successful SBICs investing in domestic small businesses. Under this framework, an existing licensed SBIC in goodstanding with the SBA would be granted a new license by the Administrator if two-thirds of the management team will remain in place, no additional licenses have been granted to the fund in the last 3 years and the full management team clears a criminal background check. The new fund would still need to raise the requisite

capital from the private sector and follow an SBA-approved investment plan.

Section 403. Revised leverage limitations for successful SBICs

This section will revise the SBIC leverage limitations to create an incentive for successful, well-managed SBICs to remain in the program. Under this section, SBA approved SBICs will be authorized to access the maximum leverage limits for any "family" of SBIC funds—those that are controlled by the same management team. The limits would also be increased for existing SBICs and for SBICs under control of a Business Development Company, with an additional provision for regular inflationary adjustments.

In order to access these increased limits, all SBIC funds under management must be in good standing with the SBA and any increased leverage would be subject to SBA approval.

Section 404. Consistency for cost control

This section would correct inconsistencies between the SBA's regulations and the Small Business Investment Act to clarify the terms of a "default" on an SBIC loan. Although the SBA's current regulations permit SBICs to charge a default interest rate (13 C.F.R. 107.885), the terms of a default are not consistent with market terms. This places SBIC funds at a competitive disadvantage with non-SBA regulated investment funds and makes it more difficult for SBICs to recover on defaulted loans, which, in turn, increases costs to the program.

Section 405. Investments in veteran-owned small businesses

This section would provide SBICs that invest in veteran-owned small businesses to receive the same increased leverage limitations that are currently available to SBICs that invest in businesses located in Low and Moderate Income areas (LMI). This is intended to promote investment in veteran-owned businesses, a demographic that the program has had significant difficulty in reaching.

Section 406. Limitations on prepayment

Voluntary prepayments are often common and necessary for proper loan administration and servicing. Currently, SBIC investments are authorized to be prepaid by the businesses that receive these loans. Under the SBA's regulations, however, all prepayments have been conditioned upon SBA pre-approval of minimum prepayment amounts and minimum notice periods.

This section would clarify that no prior approval is necessary for customary minimum prepayment amounts and would establish a *de minimis* amount (the lesser of $50,000 or 5 percent of the principal amount) for other prepayment amounts that would not require written pre-approval or advance notice.

Section 407. Investment with certain passive entities

This provision would permit SBICs to make investments using wholly-owned passive entities whose sole purpose is to make investments in small businesses.

Section 408. Investment in smaller enterprises

This provision would obviate any requirement that SBICs make more than 25 percent of the aggregate dollar amount of its investments in a smaller enterprise if such investments would result in a net cost to the SBIC.

Section 409. Capital impairment

This provision will provide SBICs that have received earmarked assets with 6 years following licensing to remedy any condition of capital impairment that does not exceed 85 percent of the total leverage commitment received from the SBA.

Section 410. Tangible net worth

This provision will establish a consistent manner of determining the tangible net worth for both small business concerns and smaller enterprises under the Small Business Investment Act that uses Generally Accepted Accounting Principles and a measurement of total new worth and intangibles.

Section 411. Development of agency record

This provision would require the Associate Administrator for Capital Access to develop and keep a written evidentiary record pertaining to each application for a license by an SBIC. This record would serve as the basis for appeals in the application process.

Section 412. Program levels

This provision would authorize the SBA to make $5 billion each, in purchases of SBIC Participating Securities and debenture leverage for fiscal years 2010 and 2011.

TITLE V—NEW MARKETS VENTURE CAPITAL AND RENEWABLE ENERGY CAPITAL INVESTMENT PROGRAMS

Subtitle A—Enhanced New Markets Venture Capital program

Section 501. Expansion of New Markets Venture Capital program

To date, only six NMVC companies are participating in the New Markets program and the SBA's current budget allocates no resources to bring more companies into the program. The Committee intends for this provision to mandate that the SBA Administrator to actively engage in affirmative actions to expand the number of NMVC companies and increase the number of investments made by current and new NMVC companies. At a minimum, the Committee intends that the SBA's budget reflect efforts to operate the program.

This section would also require the Administrator to perform a study on their success in expanding the NMVC program and report his progress in expanding the program no later than one year after the enactment of this provision.

Section 502. Improved nationwide distribution

This section would direct the SBA Administrator to ensure that there is a uniform geographic distribution of NMVC companies in connection with the agency's efforts to expand the program. In li-

censing new NMVC companies, this provision would require the Administrator to avoid allocating limited program resources to license new NMVC companies where existing NMVC companies already exist and can meet the demand for small business investment in low income areas. Currently, small business investment is concentrated in only a handful of geographic areas, which are primarily located along the East and West coasts of the U.S.

Section 503. Increased investment in small business concerns engaged primarily in manufacturing

This section will amend the NMVC program to place an increased focus on small businesses engaged in manufacturing. The program's current limitation to "smaller enterprises" will be expanded to permit investment in small business concerns engaged primarily in manufacturing that are located in low income areas. Additionally, the private capital requirements for NMVC companies that investment in small manufacturers are lowered, thus making it easier for these companies to secure final approval from the SBA. The Committee intends for the SBA to facilitate the licensing of these NMVC companies, particularly in communities that have lost a significant portion of their manufacturing industry.

Many low income communities throughout the nation have suffered as a result of a loss of their small manufacturing and industrial economic base. The Committee believes that the NMVC program has an inherent strength at providing investment capital to these communities because the additional investment capital provided by the SBA facilitates smaller transactions that are more suitable to investments in low income communities and makes NMVC companies less reliant on public market sentiment compared to the investments made by traditional venture capital firms. Consequently, NMVC investments can flow to industries like small manufacturing, which have recently suffered particular difficulty in attracting private venture capital.

Section 504. Expanded uses for operational assistance in manufacturing

This section will amend the NMVC program to expand the permissible uses of operational assistance grants to include assistance for small manufacturing businesses in LI areas to retool, update, or replace machinery or equipment.

The Committee believes that the addition of OA grants provides the NMVC program with a significant crucial advantage over the SBIC program. By enabling NMVC companies to use these funds to retool, update, or replace machinery or equipment in small manufacturing businesses they invest in, the Committee believes that NMVC companies will be more likely to make these investments, thus enabling the program to better reach this crucial sector of the small business community.

Section 505. Updating definition of low-income geographic area

This section would amend the current definition of "low-income geographic area" by simply referring the definition directly to the definition of a "low-income community" in the Internal Revenue Code.

The Committee believes that the NMVC program's current definition of "low-income geographic area" creates a significant barrier to the program's success. As long as the definitions between the NMVC program and the NMTC program are different, NMVC companies will have difficulty in operating in low-income communities. This result is inconsistent with the program's original intent.

This section is intended to establish parity between the definitions of the eligible NMVC investments and NMTC allocations, thereby bringing these two programs into alignment. This change will help the program operate as it was originally intended and will permit investment firms to use capital raised with New Markets Tax Credit allocations to meet the program's requirements for matching private capital. Additionally, this approach ensures that the two definitions will remain aligned even in the event that eligibility conditions for tax credit allocations are changed at a future date.

Section 506. Expanding operational assistance to conditionally approved companies

This section will permit New Markets Venture Capital Companies that have received conditional approval from the SBA under Section 354 to receive early grant assistance up to $50,000 at the point of initial designation. In the event that a conditionally approved NMVC company fails to win final approval, however, the grant must be repaid to the SBA. If the company wins final approval, however, the amount of early grant assistance will be deducted from the total amount of operational grant assistance the company receives. Additionally, this section provides NMVC companies with two full years to raise private capital and matching funds for operational assistance. Currently, these companies have up to two years under current law.

These changes are intended to remedy two longstanding problems in the NMVC program. Under existing statutes, NMVC companies could not receive operational assistance grants until after they received final approval. This restriction severely limited the ability of NMVC companies to provide this assistance to their investment concerns, which is often vital to ensuring the success of these businesses and the security of their investment. This change is intended to provide very limited OA grants prior to final approval.

The Committee intends for these changes to remedy the problem that many NMVC companies experienced in reaching final approval. For many NMVC companies, raising the private capital and matching OA funds was the greatest barrier to winning final approval. By extending the timeframe for matching funds to two full years, these companies should have adequate time to raise private capital that is integral to the NMVC program.

Section 507. Limitation on time for final approval

This section provides NMVC companies with two full years to raise private capital and matching funds for operational assistance. Currently, these companies have "up to" two years under current law. The Committee intends for this change to remedy the problem that many NMVC companies experienced in reaching final approval. For many NMVC companies, raising the private capital and

matching OA funds was the greatest barrier to winning final approval. Many NMVCCs were not given a definite timeframe of two full years to raise their matching OA funds. By extending the timeframe for matching funds to two full years, these companies should have greater certainty in the licensing process and adequate time to raise private capital that is integral to the NMVC program.

Section 508. Streamlined application for New Markets Venture Capital program

This section will require the SBA to develop a set of documents that reduce the cost and burden for New Markets Venture Capital companies applying for final approval under the program. These documents must be created within 60 days after the enactment of the bill.

This section is intended to simplify the application process for new NMVC companies, enabling the SBA to license more companies and expand the program. This section is also intended to operate in conjunction with the expansion and nationwide distribution initiatives established by this legislation.

Section 509. Elimination of matching requirement

This section will eliminate the minimum amount of matching commitments for operational assistance that an NMVC company must raise before receiving final approval. Currently, this minimum is set at not less than 30 percent of the total amount of private capital or binding capital commitments the NMVC company has raised.

The requirement for matching OA commitments has proven to be the greatest barrier to licensing new NMVC companies. The required matching commitments were simply too high for many NMVC companies to meet, particularly given the economic conditions in the communities in which they operate. By eliminating this requirement, this section is intended to enable many more NMVC companies to participate in the program and should streamline the process to winning final approval from the SBA.

Section 510. Simplified formula for operational assistance grants

This section will revise the amount of operational assistance grants a NMVC company may receive. The new amounts will be equal to either 10 percent of the private resources the company has raised for operational assistance, or $1 million, whichever is less.

This section is intended to significantly simplify the formula for determining the amount of OA grants a NMVC company may receive, enabling companies to receive their OA allocations more quickly than they currently do and providing these companies with greater certainty as to the amount of OA resources that they will have. OA grants have been an integral part of the NMVC program since its inception, providing critical support for businesses that receive NMVC investment. The combination of OA funds in conjunction with NMVC investment greatly increases the potential for successful business operations and ultimately serves to protect the underlying investment while simultaneously helping achieve the public policy goals of the program.

Section 511. Authorization of appropriations and enhanced allocation for small manufacturing

This section reauthorizes appropriations in a total amount of $100 million to fund debenture guarantees and $20 million for operational assistance grants for fiscal years 2010 and 2011. Additionally, this section requires that at least half of these authorized funds be used for the purpose of entering into participation agreements and providing operational assistance to NMVC companies that invest primarily in small business concerns that are engaged in manufacturing.

This section is intended to reestablish funding for the NMVC companies and, in conjunction with the program expansion and licensing initiatives of this legislation would require the SBA to resume licensing new NMVC companies and providing additional leverage commitments to existing NMVC companies. The initiative for small manufacturing is specifically intended to increase the number of NMVC companies that primarily invest in small manufacturers. This section should not, however, present an additional barrier for NMVC companies that wish to invest in low income areas or that do not wish to invest in small manufacturers.

Subtitle B—Expanded investment in small business renewable energy

Section 521. Expanded investment in renewable energy

This section reconfigures the Renewable Fuels Capital Investment (RFCI) Program in the Small Business Investment Act of 1958 to highlight the program's existing focus on investment in all types of renewable energy, not just renewable fuels.

Section 522. Renewable Energy Capital Investment (RECI) program made permanent

This section will provide standing authority for the SBA to carry out the RECI program as a permanent part of the agency's investment mission.

Section 523. Expanded eligibility for small businesses

This section would eliminate the program's current limitation to "smaller enterprises," and will instead permit investment in all businesses that qualify as small business concerns under the Small Business Act.

Section 524. Expanded uses for operational assistance in manufacturing and small businesses

Like the NMVC program, the RECI program is bolstered by the addition of SBA administered operational assistance grants (OA) that provide matching grant assistance for resources that are provided to assist small businesses that receive investment capital with marketing, management, and other operational assistance. This section will amend the RECI program to expand the permissible uses of operational assistance to include assistance for all small businesses to take steps to reduce their energy consumption and for small manufacturing businesses to retool, update, or replace machinery or equipment.

Section 525. Expansion of Renewable Energy Capital Investment program

This section would establish mandatory language in the Small Business Investment Act of 1958 directing the SBA Administrator to actively engage in affirmative actions to expand the number of RECI companies. Despite the program's enactment in December of 2007, the Administrator has yet to implement the program and the SBA's most recent budget allocates no resources to facilitate implementation.

This section would also require the Administrator to perform a study on their success in expanding the RECI program and report this progress in expanding the program no later than one year after the enactment of this provision.

Section 526. Simplified fee structure to expedite implementation

This section will simplify the existing fee structure of the RECI program to authorize the Administrator to charge fees only for the purpose of offsetting the cost of RECI guarantees. Operational assistance grants would continue to be subsidized by appropriated funds. This will effectively expedite the implementation of the RECI program by enabling the SBA to implement the investment and leverage portion of the program independent of the operational grants.

Section 527. Increased operational assistance grants

This provision would double the existing authorization for operational assistance grants in the RECI program from its current level of $15 million a year to $30 million for each fiscal year through 2011. OA grants have been an integral part of the RECI program since its inception, providing critical support for businesses that receive RECI investment. The combination of OA funds in conjunction with investment capital greatly increases the potential for successful business operations and ultimately serves to protect the underlying investment, while simultaneously helping achieve the public policy goals of the program.

Section 528. Authorizations of appropriations

This section authorizes a program level of $1 billion in debenture guarantees.

TITLE VI—SMALL BUSINESS HEALTH INFORMATION TECHNOLOGY (HIT) FINANCING PROGRAM

Section 601. Amendment of Small Business Act

This section amends the Small Business Act to create a new loan guarantee program separate from other SBA programs that is solely available to certain healthcare providers to purchase health information technology. The HIT Loan Program will rely on private-sector lenders to provide loans that are, in turn, guaranteed by the SBA. The proceeds from a HIT loan may be used for qualifying HIT purpose including the acquisition, maintenance, or training for HIT systems and equipment.

The Committee intends for the SBA to establish a separate subsidy model for this program taking into account the limited eligi-

bility and general creditworthy attributes of borrowers in the program.

Subsection (a) Definitions

This section provides that the definition for health information technology (for purposes of the guarantee loan program) will be consistent with the "meaningful EHR use" requirements set forth in the Social Security Act. Loan proceeds shall be used exclusively for Health IT purposes.

Participation in the program is limited to physicians as defined in section 1861(r) of the Social Security Act, practitioner as described in section 1842(b)(18)(C) of that Act (such as MDs, Osteopaths, Dentists, Podiatrists, Optometrists, Chiropractors, Physician Assistants, Nurse Practitioners, Clinical Nurse Specialists, Certified Registered Nurse Anesthetist, Certified Nurse-midwifes, Clinical Social Workers, Clinical Psychologists, Registered Dietitian or Nutrition Professionals), and Physical or Occupational Therapists, Speech Language Pathologists, Audiologists, pharmacists, medical transcriptionists, and providers of durable medical equipment, prosthetics, orthotics, or supplies. The practices that are eligible must also be a "small business concern" as defined using the small business size standards.

Subsection (b) Loan guarantees for qualified eligible professionals

This provision establishes a loan guarantee program for eligible professionals, which provides a 90 percent guarantee and loan amounts up to $350,000 for any single individual/professional and $2,000,000 for any group.

Subsection (c) Fees

The fees imposed by the SBA on borrowers shall be no more than 2 percent of the guaranteed portion of the loan. The annual lender servicing fees imposed by SBA are limited to no more than 50 basis points. Additional fees may not be assessed against the borrower by a lender. The committee intends for these provisions to encourage borrowers and lenders to participate in the program.

Subsection (d) Deferral period

This provision permits a professional who has borrowed through the program to defer payment on his or her loan for at least one year and up to three years and provides authority for the SBA to subsidize the interest costs associated with the deferral. The Committee intends for these deferral periods to be an integral part of any HIT loan that should conform to the general timeframe in which HIT will begin to generate tangible financial benefits for the business.

Subsection (e) Effective date

This section provides that the SBA loan guarantee program may not take effect until the Secretary of HHS has established "meaningful EHR use requirements" as set forth in the Social Security Act.

Subsection (f) Sunset

SBA may not extend loan guarantees 5 years after the Secretary of HHS has established "meaningful EHR use requirements" as set forth in the Social Security Act.

Subsection (g) Authorization of appropriation

Authorizes $10 billion in loan authority.

TITLE VII—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

Section 701. Small Business Early Stage Investment program

This provision directs the SBA to establish and carry out a new program focused on making patient equity investment in small businesses with specific emphasis on early-stage small businesses in targeted industries.

Section 399A. Establishment of program

The program is established as a stand alone program in the Small Business Investment Act of 1958.

Section 399B. Administration of program

The program should be administered by the Investment Division established under Title II of the Small Business Investment Act of 1958.

Section 399C. Applications

The Committee intends for the program to be open to all manner of private investment companies, both those organized under relevant State or Federal laws, as well as small business investment companies (SBICs) licensed under Title III of the Small Business Investment Act. Irrespective of the entity's organization, however, all applicants must make a new application to the SBA to participate in the program.

The Administrator must establish a new application process to select investment companies to participate in the program. The Committee intends for this process to be similar to the process that the agency currently uses to select participants for its other investment programs, and should include requirements for (1) a business plan describing how the company intends to make successful venture capital investments in early stage small businesses in targeted industries; (2) information regarding the relevant venture capital qualifications and personal background of the managers of the company applying to participate in the program; and (3) a description of the extent to which the applicant meets other selection criteria that are also established under this part.

Because SBICs have already submitted an application along these lines, the Committee intends for the Administrator to establish an abbreviated application process for SBICs that have already received an SBIC license who wish to participate in the SBESI program. To the maximum extent practicable, the abbreviated application process must avoid duplication of information or materials previously submitted in the SBIC licensing process. Additionally, in taking applications from SBICs, the Administrator shall incorporate a presumption that SBICs satisfy selection criteria related to character and fitness under Section 399D(b)(3). SBICs shall also

be presumed to satisfy the criteria requiring the fund to focus on investment in early stage small businesses in targeted industries under Section 399D(b)(5). Beyond these presumptions, however, SBICs should be judged by the merits of their application and should compete on equal footing with other applicants for selection to participate in the program

Section 399D. Selection of participating investment companies

Within 90 days after receiving an application, the Administrator must make a determination to approve an application for issuance of a grant commitment to the applicant or disapprove the application and should transmit this decision to the applicant.

In deciding to approve or disapprove an application, the Administrator should consider selection criteria similar to those specified in the agency's other investing programs. These criteria are: (1) the likelihood that the company will meet the goals specified in its business plan; (2) the likelihood that the investments of the company will create or preserve jobs, both through direct hiring in the company and the small businesses in which it invests and through indirect effects in businesses outside the company and its investment businesses; (3) the character and fitness of the company's management team; (4) the previous experience of the company's management team making investments similar to those described in the application; (5) the extent to which the company will concentrate its investment activities on early stage small businesses in targeted industries; (6) the likelihood that the company will achieve profitability; (7) the management team's track record at managing profitable investment vehicles.

The Committee intends for the SBA to select participants solely by these criteria and should place its highest emphasis on the likelihood that the company will achieve profitability and protect the SBA grant interest.

Section 399E. Grants

For those companies selected to participate in the program, the Administrator shall provide grants in amounts of up to $100 million. In order to receive these grants, however, the company must have raised an amount of private capital equal to or greater than the amount of the SBA grant, thus establishing a minimum 1:1 ratio of SBA grant capital to private capital. The total aggregate amount of all grants the SBA makes to any one participating company cannot exceed $100 million. The Committee contemplates the potential for multiple grants to be awarded to investment companies that participate in the program, but the SBA may also choose to make a single grant commitment that is adequate to meet the investment strategy of the company. At a minimum, however, grant commitments by the SBA should be adequate to fund initial and follow-on investments and should protect the SBA's pro rata interests in the investment company. Grant funds can only be drawn-down by the investment company at the same time and in the same proportions as the private capital is paid into the investment fund and should be paid promptly by the SBA when called by the investment company manager.

Grant commitments from the SBA should be available to selected investment companies for the purpose of making first-round investments in new small businesses for a five-year period after the grant commitment is first drawn upon. After the initial five-year period, the investment company will not be able to make new-named investments, however, and will be limited to drawing upon the SBA grant commitment for the purpose of making follow-on investments in small businesses that have already received an initial investment. This period for follow-on investments should remain open for ten years after the grant commitment is first drawn upon, with an additional two one-year periods available at the discretion of the Administrator. SBA will audit participating investment companies when half of the grant commitment funds have been drawn-down to ensure that the grant is being invested in a fashion consistent with the law.

Section 399F. Investments in early stage small businesses

As a condition of receiving an SBA grant, a participating investment company must make all of its investments in small businesses, as determined on the date when the first investment is made in the business. Additionally, at least 50 percent of an investment company's investments must be made in early-stage small businesses in targeted industries, as those terms are defined in the act. It is possible that some investment companies would voluntarily choose to make more of its investments in early-stage businesses in targeted industries, and the Committee believes that these investment companies should be favorably considered by the Administrator.

Section 399G. Pro rata investment shares

All investments made by a participating investment company must include a grant funds in an amount that is equal to the overall proportions of grant funds and private capital in the investment fund.

Section 399H. Grant interest

In exchange for receiving SBESI funds, participating investment funds must convey a "grant interest" to the SBA. The grant interest shall carry all the rights and attributes of other investors, but shall not denote control or voting rights to the SBA. The grant interest shall entitle the SBA to a pro rata portion of any distributions made by the fund, equal to the overall percentage of capital in the investment company that the grant comprises. In this sense, the Committee intends that the SBA's grant interest be akin to that of a limited partner interest in a limited partnership or limited liability company. The Administrator shall receive distributions from the licensed company at the same times and in the same amounts as other investors in the company, without regard to a specific repayment date or deadline. The investment company shall make allocations of income, gain, loss, deduction and credit to the Administrator with respect to the grant interest as if the Administrator were an investor.

The manager's profits interest shall not exceed twenty percent of the firm's profits, exclusive of any profits that may accrue as a result of the manager's individual capital contributions to the invest-

ment company. Any excess of this amount, less deemed taxes thereon, shall be returned by the manager and paid to the investors and the SBA in proportion to their capital contributions and grants paid in. No manager's profits interest shall be paid prior to the payment to the investors and the Administration of all contributed capital and grants made, other than a tax distribution.

Additionally, as a condition of receiving a grant, a participating investment company must make all distributions to all investors in cash and must make distributions within a reasonable time after exiting investments.

Section 399I. Fund

Ongoing funding for the program will be provided through a separate fund created with the program which shall be available to the Administrator, subject to annual appropriations, as a revolving fund for the purposes of the program. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to the operations of the Administrator under this part shall be paid from the fund.

The Committee intends for this revolving fund to enable the program to become self-sustaining.

Section 399J. Application of other sections

This provision incorporates SBA oversight and enforcement authority, including authorities to take action in cases of fraud, waste, and abuse by investment companies, its officers and agents, from its existing investment programs into the SBESI program. Additionally, the Committee intends for these provisions to provide the SBA with authority to take any actions that are already taken under the SBA's SBIC program to enforce agency regulations and polices against program participants and protect taxpayer funds. This includes the conduct of regular examinations and investigations of participating investment companies and the issuance of removal, prohibition, suspension, and cease and desist actions orders for malfeasance in the program It also contemplates the pursuit of more rigorous remedies at law for fraud or breaches of fiduciary duties with civil and criminal penalties

Section 399K. Definitions

"Targeted Industries" are predominately involved in researching, developing, manufacturing, producing, or bringing to market goods, products, or services for the agricultural technology, energy technology, environmental technology, life science, information technology, digital media or clean technology sectors.

An "Early Stage Small Business" is a small business concern as defined in section 3 of the Small Business Act that is located in the United States (or its territories), and that has not generated gross annual sales revenues exceeding $15 million in any of the previous three years.

The Committee intends for these businesses to all share attributes of being highly capital-intensive enterprises whose business models are generally not amenable to financing through lending programs.

Section 399L. Authorization

This section will authorize the SBESI program to make a total of $200 million in grants.

TITLE VIII—DISASTER RELIEF PROGRAMS

Section 801. Revised collateral requirements

This provision will revise the collateral requirements so that business owners are not required to pledge their homes for business loans less than $250,000. The Committee believes that this provision will encourage more small businesses to seek disaster loans without apprehension that their home will be placed at risk as they attempt to rebuild their businesses following a disaster. Additionally, the Committee believes that this provision is consistent with the SBA's current practice of making loans based upon an individual's ability to repay and income.

Section 802. Increased limits

This provision will increase the legislative limit on disaster loans from $1.5 million to $3 million for homeowner loans and from $2 to $3 million for business loans.

Section 803. Revised repayment terms

This provision requires the SBA to impose a minimum deferment period of twelve months and mandates that the repayment period begin from the date that the final loan disbursement is made. Additionally, this provision requires that repayment amounts be based solely on funds that have actually been disbursed.

The Committee intends for this provision to provide disaster victims with more equitable repayment terms that are more responsive to their needs immediately following a disaster. Additionally, because the interest continues to accrue during the mandatory twelve month deferment period, the Committee believes that this provision will have little or no cost. The Committee does not intend for the increased deferment period or revised repayment policy to affect existing or pending disaster loan applications, but should only be prospectively applied for new loans approved or made after the date of enactment.

Section 804. Revised disbursement process

This provision will require that approved funds for SBA disaster loans be disbursed upon a schedule with increased minimum disbursement levels to better meet the needs of disaster victims. The Committee believes that this provision will enable the SBA to remedy problems in disbursing approved loan amounts in adequate amounts to meet disaster victim's needs in a timely manner. The Committee does not intend for this provision to preclude the SBA from making full disbursements in situations where it feels full disbursements are appropriate. The Committee only intends that this provision set minimum amounts that must be disbursed at each stage. The Committee also does not intend that the minimum disbursement amounts should be absolute in situations where the borrower actually desires that a lesser amount be disbursed in each stage.

The Committee believes that by maintaining a disbursement schedule with stages and by leaving the disbursement schedule for loans in excess of $500,000 at the discretion of the SBA, the risk of increased losses will be limited

Section 805. Grant program

This provision will provide the SBA with authority to offer grants of up to $100,000 for the businesses most severely affected by a catastrophic disaster for which the Administrator has declared eligibility for additional disaster assistance (pursuant to 7(b)(9) of the Small Business Act). The Committee believes that this program will fill the need for financial assistance for small businesses that is currently not being met by any federally administered assistance program, particularly under circumstances where a disaster is of such scale or severity that disaster victims are unlikely to seek out loan assistance.

To limit the costs associated with this program, the Committee has limited the scope of the program by imposing very strict eligibility requirements. Only small businesses actually located in an area affected by the applicable disaster will be eligible for grant assistance. The Committee intends for this limitation to restrict the availability of grant assistance to only those communities that were severely impacted by the physical damage of a catastrophic disaster. Additionally, a small business must also certify that it will reestablish its business in the same county in which it was originally located. A small business must also have been in existence for at least two years prior to the disaster and must have applied for and been rejected for a conventional SBA disaster loan. The Committee also intends for grant assistance to go to small businesses that are economically viable, as determined by the Administrator. The Committee believes that these criteria will be sufficiently stringent to ensure that only a small number of businesses will meet all of these requirements to qualify for a grant. Additionally, the Committee only intends for grant assistance to be provided in situations where the Administrator feels it is appropriate, and has thus provided the Administrator with discretion over whether the grant program will be implemented.

The grant funding provided under this provision is intended to complement the existing purpose of the SBA disaster assistance lending program by serving as a tool to deliver capital to small businesses in a form that the existing loan program cannot (i.e. under circumstances where a disaster is of such scale or severity that disaster victims are unlikely to seek out loan assistance). In this manner, the program will serve the same public policy goals of the SBA disaster assistance mission.

Section 806. Regional disaster working groups

This provision shall require the Administrator to establish and carry out a new program whereby the Regional Administrator in each of the SBA's regional offices must develop region-specific disaster preparedness and response plans that are based upon the comprehensive disaster response plan required by § 40 of the Small Business Act and that is developed in cooperation with city, state, and federal emergency response authorities as well as with representatives from businesses located within the region. At a min-

imum, the disaster preparedness and recovery subplan must identify and plan for three disaster scenarios, either natural or man-made, that are likely to occur in the region.

The regional disaster working groups are intended to enhance the SBA's ability to respond on a local level and fulfill the disaster assistance mission of providing small firms with vital access to capital to rebuild following a disaster. In this manner, the program will serve the same public policy goals of the SBA disaster assistance mission.

Section 807. Outreach grants for loan applicant assistance

This section will direct the Administrator to use funds authorized for administrative expenses in the Disaster Loan program to make grants to Women's Business Centers, Veterans' Business Outreach Centers, Small Business Development Centers, and local chambers of commerce located in an area of a declared disaster for the purpose of providing disaster loan applicants with assistance in preparing applications for disaster assistance. The Committee intends for this grant program to be carried out using funds authorized for administrative expenses in the disaster loan program.

The grant funding provided under this provision is intended to complement the existing purpose of the SBA disaster assistance lending program by serving as a tool to deliver capital to small businesses in circumstances where a disaster is of such scale or severity that the SBA's existing loan program outreach and loan application efforts are likely to be overwhelmed. In this manner the program will serve the same public policy goals of the SBA disaster assistance mission.

TITLE IX—REGULATIONS

Section 901. Regulations

Pursuant to this section, the SBA must promulgate regulations to carry out the provisions contained in the Act within 180 days following enactment.

VII. Congressional Budget Office Cost Estimate

The legislation is currently under review by CBO and when it is final will be made part of the Congressional Record.

VIII. Committee Estimate of Costs

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3854. Based on estimates provided by CBO for H.R. 1332, H.R. 1361, H.R. 3020, H.R. 3567, and H.R. 3866, as reported by the Committee on Small Business or by the House during the 110th Congress and further analysis by Committee staff, the Committee estimates that the bill will cost $1,459,985,000 ($1.46 billion) over the two-year authorization period. The Committee notes several changes regarding previous CBO cost estimates. First, H.R. 3854 does not contain an authorization for the Small Business Investment Company (SBIC) participating securities program, which would have been scored on a dollar-for-dollar basis. Second, H.R.

3854 does not authorize an angel investment or surety bond program, as were contained in H.R. 3567.

In determining the costs of H.R. 3854, the Committee also notes that the extension of the ARC loan program in section 118 and the ARRA-related fee reductions in section 114 are for one year only and do not carry over through the duration of the authorization. The Capital Backstop program authorized in section 111 is subject to the same underwriting and loan origination regulations as the 7(a) loan program; as a result, this program in not expected to incur subsidy costs in excess of those for the 7(a) loan program prior to the ARRA-related changes to fees and guarantees. The national lender training program established in section 106 will be fully paid for through fees levied on program participants and has no cost. The Microloan interest rate reduction contained in section 308 has no line item cost, as funds are taken from monies provided through program authorizations that have been accounted for in the Committee's estimate. Committee staff used subsidy rates and loan portfolio assumptions in the calculation of subsidy costs for the loan guarantee and direct loan programs contained in this cost estimate. These subsidy rate and loan portfolio assumptions are from the FY 2010 Federal Credit Supplement, as prepared by the Office of Management and Budget that was submitted with the President's FY 2010 budget proposal. Committee staff used internal forecasts for loan volume and program demand, which reflect both historical usage and forecasts regarding of economic conditions.

Finally, the committee estimates the cost of H.R. 3854 would be $2,719,462,500 ($2.72 billion) over the 2010–2014 periods, subject to appropriation of the specified and necessary amounts.

IX. Oversight Findings

In accordance with clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3854 are incorporated into the descriptive portions of this report.

X. Statement of Constitutional Authority

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

XI. Compliance With Public Law 104–4

H.R. 3854 contains no unfunded mandates.

XII. Congressional Accountability Act

H.R. 3854 does not relate to the terms and conditions of employment or access to public services or accommodations with the meaning of section 102(b)(3) of P.L. 104–1.

XIII. Federal Advisory Committee Statement

This legislation does not establish or authorize the establishment of any new advisory committees.

XIV. Statement of No Earmarks

Pursuant to clause 9 of rule XXI, H.R. 3854 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

XV. Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3854 includes a number of provisions designed to modernize and make more effective the SBA 7(a), CDC, SBIC, NMVC, RECI, and Disaster Assistance programs.

XVI. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

Sec. 3. (a)(1) * * *

* * * * * * *

(5) In addition to any other size standard under this subsection, the Administrator shall establish and permit a lender making a loan under section 7(a) to use an alternative size standard. The alternative size standard shall be based on factors including the maximum tangible net worth and average net income of a business concern.

* * * * * * *

Sec. 7. (a) Loans to Small Business Concerns; Allowable Purposes; Qualified Business; Restrictions and Limitations.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts 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 business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) * * *

(2) Level of participation in guaranteed loans.—

(A) In general.—Except as provided in subparagraph (B), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds $150,000 *and is less than or equal to $2,000,000*; [or]

(ii) 85 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 $150,000[.]*; or*

(iii) 50 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds $2,000,000.

* * * * * * *

(3) No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $1,500,000 (or if the gross loan amount would exceed [$2,000,000] *$3,000,000*), except as provided in subparagraph (B);

* * * * * * *

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(i) * * *

* * * * * * *

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i)*, except that a lender making a loan under paragraph (31) may not retain any percentage of a fee collected under such subparagraph*.

* * * * * * *

[(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

[(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

[(B) PILOT PROGRAM DEFINED.—In this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

[(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of $100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.]

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) LIMITATION ON NUMBER.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program.

(B) DOLLAR LIMITATIONS.—

(i) IN GENERAL.—With respect to any pilot program under this subsection established on or after the date of the enactment of the Small Business Financing and Investment Act of 2009, no loan shall be made under such program if such loan would result in the total amount of loans made during a fiscal year under all such programs to be in excess of 5 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

(ii) CERTAIN PRE-EXISTING PROGRAMS.—With respect to any pilot program under this subsection established before the date of the enactment of the Small Business Financing and Investment Act of 2009, no loan shall be made under such program if such loan would result in the total amount of loans made during a fiscal year under all such programs to be in excess of 10 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

(C) EXPIRATION.—

(i) IN GENERAL.—Except as provided in clause (iii), the duration of any pilot program under this subsection may not exceed 3 years.

(ii) DESIGNATION AS NEW PROGRAM.—For purposes of this subparagraph, a pilot program shall not be treated as a new pilot program solely on the basis of a modification or change in the pilot program, including the change of its name.

(iii) EXISTING PROGRAMS.—With respect to any pilot program in existence on the date of the enactment of the Small Business Financing and Investment Act of 2009, such program may continue in effect for a period not exceeding 3 years after such date without regard to the duration of such program before such date.

(D) REGULATIONS.—

(i) IN GENERAL.—With respect to each pilot program under this subsection, including each pilot program in existence on the date of the enactment of the Small Business Financing and Investment Act of 2009, the Administrator shall—

(I) issue regulations for such program after providing notice in the Federal Register and an opportunity for comment; and

(II) ensure that such regulations are published in the Code of Federal Regulations.

(ii) PILOT PROGRAMS ESTABLISHED AFTER DATE OF ENACTMENT.—With respect to any pilot program established after the date of the enactment of the Small Business Financing and Investment Act of 2009, such program shall not take effect until the requirements under this subparagraph are satisfied.

(E) REPEAL OF AUTHORITY TO WAIVE CERTAIN RULES.—

(i) IN GENERAL.—Notwithstanding section 120.3 of title 13, Code of Federal Regulations, the Administrator may not from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas with respect to this subsection, unless such suspension, modification, or waiver is explicitly authorized by Act of Congress.

(ii) EXISTING PILOT PROGRAMS.—Nothing under clause (i) may be construed to affect a pilot program in existence on the date of the enactment of the Small Business Financing and Investment Act of 2009.

(F) PILOT PROGRAM.—For purposes of this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by Act of Congress.

* * * * * * *

[(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 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 60 percent of the total business space in the property.**]**

(28) LEASING.—If a loan under this subsection is used to acquire or construct a facility, the assisted small business concern—

(A) shall permanently occupy and use not less than 50 percent of the space in such facility; and

(B) may, on a temporary or permanent basis, lease to others not more than 50 percent of the space in such facility.

(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by **[**a State licensed or certified appraiser**]** *an appraiser licensed or certified by the State in which such property is located—*

(A) shall be required by the Administration in connection with any such loan for more than **[**$250,000**]** *$400,000*; or

(B) may be required by the Administration or the lender in connection with any such loan for **[**$250,000**]** *$400,000* or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

* * * * * * *

[(32)**]** *(33)* INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) * * *

(ii) the term "**[**pilot**]** program" means the **[**pilot**]** program established under subparagraph (B); and

* * * * * * *

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a **[**pilot**]** program under which the Administrator shall reduce the fees for veteran participation loans.

[(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.]

[(D)] *(C)* MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

[(E)] *(D)* FEES.—

(i) IN GENERAL.— * * *

* * * * * * *

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the [pilot] program.

[(F) GAO REPORT.—

[(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

[(ii) CONTENTS.—The report submitted under clause (i) shall include—

[(I) the number of veteran participation loans for which fees were reduced under the pilot program;

[(II) a description of the impact of the pilot program on the program under this subsection;

[(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

[(IV) recommendations for improving the pilot program.]

(34) SMALL LENDER OUTREACH PROGRAM.—The Administrator shall establish and carry out a program to provide support to regional, district, and branch offices of the Administration to assist small lenders, who do not participate in the Preferred Lenders Program, to participate in the programs under this subsection.

(35) RURAL LENDING OUTREACH PROGRAM.—

(A) IN GENERAL.—The Administrator shall establish and carry out a rural lending outreach program (hereinafter referred to in this paragraph as the "program") to provide loans under this subsection in accordance with this paragraph.

(B) MAXIMUM PARTICIPATION.—A loan under the program shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(C) MAXIMUM LOAN AMOUNT.—The maximum amount of a loan under the program shall be $250,000.

(D) USE OF RURAL LENDERS.—The program shall be carried out through lenders located in a rural area (as such term is defined under subsection (m)(11)(C)) or, if a small business concern located in a rural area does not have a

lender located within 30 miles of the principal place of business of such concern, through any lender chosen by such concern that provides loans under this subsection.

(E) TIME FOR APPROVAL.—The Administrator shall approve or disapprove a loan under the program within 36 hours.

(F) DOCUMENTATION.—The program shall use abbreviated application and documentation requirements.

(G) CREDIT STANDARDS.—Minimum credit standards, as the Administrator considers necessary to limit the rate of default on loans made under the program, shall apply.

(36) COMMUNITY EXPRESS PROGRAM.—

(A) IN GENERAL.—The Administrator shall carry out a Community Express Program to provide loans under this subsection in accordance with this paragraph.

(B) REQUIREMENTS.—For a loan made under the Community Express Program, the following shall apply:

(i) The loan shall be in an amount not exceeding $250,000.

(ii) The loan shall be made to a small business concern the majority ownership interest of which is directly held by individuals the Administrator determines are, without regard to the geographic location of such individuals, women, members of qualified Indian tribes, socially or economically disadvantaged individuals, veterans, or members of the reserve components of the Armed Forces.

(iii) The loan shall comply with the collateral policy of the Administration.

(iv) The loan shall include terms requiring the lender to provide, at the expense of the lender, technical assistance to the borrower through the lender or a third-party provider.

(v) The Administrator shall approve or disapprove the loan within 36 hours.

(37) NATIONAL LENDER TRAINING PROGRAM.—

(A) IN GENERAL.—The Administrator shall establish and carry out, through the regional offices of the Administration, a lender training program for new and existing lenders under this subsection with respect to the lending systems, policies, and procedures of the Administration.

(B) FEES.—The Administrator shall charge a fee for the program established under subparagraph (A) to reduce the cost of such program to zero.

(C) LIMITATION.—The program established under subparagraph (A) may not be carried out by contract with a nongovernmental entity.

(38) APPLICATIONS FOR REPURCHASE OF LOANS.—

(A) IN GENERAL.—Not later than 45 days after the date of the receipt of a claim from a lender for proper payment of the guaranteed portion of a loan under this subsection due to default, the Administrator shall make a final determination with respect to the approval or denial of such claim.

(B) LATE DETERMINATIONS.—If the Administrator does not make a final determination under subparagraph (A) in the time period specified in such subparagraph, the claim shall be approved and paid promptly.

(39) COOPERATIVES.—The Administration may provide loans under this subsection to any cooperative that—

(A) is not organized as a tax-exempt entity;

(B) is engaged in a legal business activity;

(C) obtains financial benefits for the cooperative and for the members of such cooperative; and

(D) is eligible under applicable size standards of the Administration, including that any business entity that is a member of such cooperative is eligible under applicable size standards of the Administration.

(40) CAPITAL BACKSTOP PROGRAM.—

(A) IN GENERAL.—The Administrator shall establish a process under which a small business concern may submit an application to the Administrator for the purpose of securing a loan under this subsection. With respect to such application, the Administrator shall collect all information necessary to determine the creditworthiness and repayment ability of an applicant and shall determine if such application meets basic eligibility and credit standards for a loan under this subsection.

(B) PARTICIPATION OF LENDERS.—

(i) IN GENERAL.—The Administrator shall establish a process under which the Administrator makes available to lenders each loan application submitted and determined to meet basic eligibility and credit standards under subparagraph (A) for the purpose of such lenders originating, underwriting, closing, and servicing the loan for which the applicant applied.

(ii) ELIGIBILITY.—Lenders are eligible to receive a loan application described in clause (i) if they participate in the programs established under this subsection.

(iii) LOCAL LENDERS.—The Administrator shall first make available a loan application described in clause (i) to lenders within 100 miles of the principal office of the loan applicant.

(iv) PREFERRED LENDERS.—If a lender described in clause (iii) does not agree to originate, underwrite, close, and service the loan applied for within 5 business days of receiving a loan application described in clause (i), the Administrator shall subsequently make available such loan application to lenders in the Preferred Lenders Program under paragraph (2)(C)(ii) of this subsection.

(v) AUTHORITY OF ADMINISTRATION TO LEND.—If a lender described in clauses (iii) or (iv) does not agree to originate, underwrite, close, and service the loan applied for within 10 business days of receiving a loan application described in clause (i), the Administrator shall originate, underwrite, close, and service such loan.

(C) ASSET SALES.—The Administrator shall offer to sell loans made by the Administrator under this paragraph. Such sales shall be made through the semi-annual public solicitation (in the Federal Register and in other media) of offers to purchase. The Administrator may contract with vendors for due diligence, asset valuation, and other services related to such sales. The Administrator may not sell any loan under this subparagraph for less than 90 percent of the net present value of the loan, as determined and certified by a qualified third party.

(D) LOANS NOT SOLD.—The Administrator shall maintain and service loans made by the Administrator under this paragraph that are not sold through the asset sales under this paragraph.

(E) EFFECTIVE DATES.—This paragraph shall have effect on a date if—

(i) such date occurs during a period that—

(I) begins on the date the Bureau of Economic Analysis, or any successor organization, makes a determination that the gross domestic product of the United States has decreased for three consecutive quarters; and

(II) ends on the date the Bureau of Economic Analysis, or any successor organization, makes a determination that the gross domestic product of the United States has increased for two consecutive quarters; and

(ii) the number of loans provided under this subsection prior to such date in the fiscal year including such date is at least 30 percent less than the number of such loans provided prior to the same point in the previous fiscal year.

(F) IMPLEMENTATION.—The Administrator shall establish a group of at least 250 individuals available to carry out activities under this paragraph on any date on which this paragraph has effect under subparagraph (E). The Administrator shall provide to such group the training necessary to carry out activities under this paragraph.

(G) APPLICATION OF OTHER LAW.—Nothing in this paragraph shall be construed to exempt any activity of the Administrator under this paragraph from the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(H) AUTHORIZATION OF APPROPRIATIONS.—

(i) PROGRAM LEVELS.—The Administrator is authorized to make loans under this paragraph in an amount that is equal to half the amount authorized for loans under this subsection other than loans under this paragraph.

(ii) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available to carry out this subsection, there are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(41) GOODWILL.—The Administrator may not apply an application, processing, or approval standard to a loan for the pur-

pose of financing goodwill under this subsection, unless such standard applies to all loans under this subsection.

* * * * * * *

(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed **[**$1,500,000**]** *$3,000,000*, unless such applicant constitutes, or have become due to changed economic circumstances, a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the **[**$1,500,000**]** *$3,000,000* limitation.

* * * * * * *

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed **[**$2,000,000**]** *$3,000,000*.

* * * * * * *

(10) GRANTS TO DISASTER-AFFECTED SMALL BUSINESSES.—

(A) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator may make a grant, in an amount not exceeding $100,000, to a small business concern that—

(i) is located in an area affected by the applicable major disaster;

(ii) submits to the Administrator a certification by the owner of the concern that such owner intends to reestablish the concern in the same county in which the concern was originally located;

(iii) has applied for, and was rejected for, a conventional disaster assistance loan under this subsection; and

(iv) was in existence for at least 2 years before the date on which the applicable disaster declaration was made.

(B) PRIORITY.—In making grants under this paragraph, the Administrator shall give priority to a small business concern that the Administrator determines is economically viable but unable to meet short-term financial obligations.

(C) PROGRAM LEVEL AND AUTHORIZATION OF APPROPRIATIONS.—

(i) PROGRAM LEVEL.—The Administrator is authorized to make $100,000,000 in grants under this paragraph for each of fiscal years 2010 and 2011.

(ii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this paragraph.

(11) OUTREACH GRANTS FOR LOAN APPLICANT ASSISTANCE.—

(A) IN GENERAL.—From amounts made available for administrative expenses relating to activities under this subsection, the Administrator is authorized to make grants to the following:

(i) A women's business center in an area affected by a disaster.

(ii) A small business development center in an area affected by a disaster.

(iii) A Veteran Business Outreach Center in an area affected by a disaster.

(iv) A chamber of commerce in an area affected by a disaster.

(B) USE OF GRANT.—An entity specified under subparagraph (A) shall use a grant received under this paragraph to provide application preparation assistance to applicants for a loan under this subsection.

(C) PROGRAM LEVEL.—The Administrator is authorized to make $50,000,000 in grants under this paragraph for each of fiscal years 2010 and 2011.

* * * * * * *

(f) ADDITIONAL REQUIREMENTS FOR 7(b) LOANS.—

(1) * * *

(2) REVISED COLLATERAL REQUIREMENTS.—In making a loan with respect to a business under subsection (b), if the total approved amount of such loan is less than or equal to $250,000, the Administrator may not require the borrower to use the borrower's home as collateral.

(3) REVISED REPAYMENT TERMS.—In making loans under subsection (b), the Administrator—

(A) may not require repayment to begin until the date that is 12 months after the date on which the final disbursement of approved amounts is made; and

(B) shall calculate the amount of repayment based solely on the amounts disbursed.

(4) REVISED DISBURSEMENT PROCESS.—In making a loan under subsection (b), the Administrator shall disburse loan amounts in accordance with the following:

(A) If the total amount approved with respect to such loan is less than or equal to $150,000—

(i) the first disbursement with respect to such loan shall consist of 40 percent of the total loan amount, or a lesser percentage of the total loan amount if the Administrator and the borrower agree on such a lesser percentage;

(ii) the second disbursement shall consist of 50 percent of the loan amounts that remain after the first disbursement, and shall be made when the borrower has

produced satisfactory receipts to demonstrate the proper use of 50 percent of the first disbursement; and

(iii) the third disbursement shall consist of the loan amounts that remain after the preceding disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first disbursement and 50 percent of the second disbursement.

(B) If the total amount approved with respect to such loan is more than $150,000 but less than or equal to $500,000—

(i) the first disbursement with respect to such loan shall consist of 20 percent of the total loan amount, or a lesser percentage of the total loan amount if the Administrator and the borrower agree on such a lesser percentage;

(ii) the second disbursement shall consist of 30 percent of the loan amounts that remain after the first disbursement, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of 50 percent of the first disbursement;

(iii) the third disbursement shall consist of 25 percent of the loan amounts that remain after the first and second disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first disbursement and 50 percent of the second disbursement; and

(iv) the fourth disbursement shall consist of the loan amounts that remain after the preceding disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first and second disbursements and 50 percent of the third disbursement.

(C) If the total amount approved with respect to such loan is more than $500,000—

(i) the first disbursement with respect to such loan shall consist of at least $100,000, or a lesser amount if the Administrator and the borrower agree on such a lesser amount; and

(ii) the number of disbursements after the first, and the amount of each such disbursement, shall be in the discretion of the Administrator, but the amount of each such disbursement shall be at least $100,000.

* * * * * * *

[(e) [RESERVED].
[(f) [RESERVED].**]**

* * * * * * *

(m) MICROLOAN PROGRAM.—

(1)(A) * * *

(B) ESTABLISHMENT.—There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making **[**short-term,**]** fixed interest rate microloans to startup,

newly established, and growing small business concerns under paragraph (6);

* * * * * * *

(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

(A) meets the definition in **[**paragraph (10)**]** *paragraph (11)*; and

[(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.**]**

(B) has—

(i) at least—

(I) 1 year of experience making microloans to startup, newly established, or growing small business concerns; or

(II) 1 full-time employee who has not less than 3 years of experience making microloans to startup, newly established, or growing small business concerns; and

(ii) at least—

(I) 1 year of experience providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers; or

(II) 1 full-time employee who has not less than 1 year of experience providing intensive marketing, management, and technical assistance to borrowers.

(3) LOANS TO INTERMEDIARIES.—

(A) * * *

* * * * * * *

(C) LOAN LIMITS.—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed **[**$750,000**]** *$1,000,000* in the first year of such intermediary's participation in the program, and **[**$3,500,000**]** *$7,000,000* in the remaining years of the intermediary's participation in the program. *The Administrator may treat the amount of $7,000,000 in this subparagraph as if such amount is $10,000,000 if the Administrator determines, with respect to an intermediary, that such treatment is appropriate.*

* * * * * * *

(F) LOAN DURATION; INTEREST RATES.—

(i) * * *

* * * * * * *

(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary

that makes loans to small business concerns and entrepreneurs averaging not more than [$7,500] *$10,000*, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

* * * * * * *

(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) * * *

* * * * * * *

(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(i) IN GENERAL.—Each intermediary may expend an amount not to exceed [25 percent] *35 percent* of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than [25 percent] *35 percent* of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

* * * * * * *

(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

(A) IN GENERAL.—An eligible intermediary shall make [short-term,] fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

* * * * * * *

(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than [$7,500] *$10,000* made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than [$7,500] *$10,000* made by the intermediary to a small business

concern or entrepreneur by more than 8.5 percentage points.

* * * * * * *

(11) DEFINITIONS.—For purposes of this subsection—

(A) * * *

(B) the term "microloan" means a [short-term,] fixed rate loan of not more than $35,000, made by an intermediary to a startup, newly established, or growing small business concern;

* * * * * * *

(14) CREDIT REPORTING INFORMATION.—The Administrator shall establish a process, for use by an intermediary making a loan to a borrower under this subsection, under which the intermediary shall provide to the major credit reporting agencies the information about the borrower, both positive and negative, that is relevant to credit reporting, such as the payment activity of the borrower on the loan. Such process shall allow an intermediary the option of providing information to the major credit reporting agencies through the Administration or independently.

(15) REPORTING REQUIREMENT.—Not later than 90 days after the end of each fiscal year, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that includes, with respect to such fiscal year of the microloan program, the following:

(A) The names and locations of each intermediary that received funds to make microloans or provide marketing, management, and technical assistance.

(B) The amounts of each loan and each grant provided to each such intermediary in such fiscal year and in prior fiscal years.

(C) A description of the contributions from non-Federal sources of each such intermediary.

(D) The number and amounts of microloans made by each such intermediary to all borrowers and to each of the following:

(i) Women entrepreneurs and business owners.

(ii) Low-income entrepreneurs and business owners.

(iii) Veteran entrepreneurs and business owners.

(iv) Disabled entrepreneurs and business owners.

(v) Minority entrepreneurs and business owners.

(E) A description of the marketing, management, and technical assistance provided by each such intermediary to all borrowers and to each of the following:

(i) Women entrepreneurs and business owners.

(ii) Low-income entrepreneurs and business owners.

(iii) Veteran entrepreneurs and business owners.

(iv) Disabled entrepreneurs and business owners.

(v) Minority entrepreneurs and business owners.

(F) The number of jobs created and retained as a result of microloans and marketing, management, and technical assistance provided by each such intermediary.

(G) The repayment history of each such intermediary.

(H) The number of businesses that achieved success after receipt of a microloan.

(16) INTEREST ASSISTANCE.—

(A) IN GENERAL.—The Administrator is authorized to use amounts determined unlikely to be expended under subparagraph (B) to assist borrowers that receive a microloan under this subsection to reduce the interest paid with respect to such microloan.

(B) AMOUNTS UNLIKELY TO BE EXPENDED.—Not later than April 1 of each fiscal year, the Administrator shall determine if any amounts made available to carry out this subsection for such fiscal year are unlikely to be expended for activities under this subsection other than activities under this paragraph.

* * * * * * *

SEC. 20. (a) * * *

* * * * * * *

(f) FISCAL YEARS 2010 AND 2011 WITH RESPECT TO SECTION 7(a).—

(1) PROGRAM LEVELS.—For the programs authorized by this Act, in each of fiscal years 2010 and 2011 commitments for general business loans authorized under section 7(a) may not exceed $20,000,000,000.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(g) PROGRAM LEVELS WITH RESPECT TO CDC ECONOMIC DEVELOPMENT LOAN PROGRAM.—

(1) FISCAL YEAR 2010.—For financings authorized by section 7(a)(13) of this Act and title V of the Small Business Investment Act of 1958, the Administrator is authorized to make $9,000,000,000 in guarantees of debentures for fiscal year 2010.

(2) FISCAL YEAR 2011.—For financings authorized by section 7(a)(13) of this Act and title V of the Small Business Investment Act of 1958, the Administrator is authorized to make $10,000,000,000 in guarantees of debentures for fiscal year 2011.

(h) FISCAL YEARS 2010 AND 2011 WITH RESPECT TO SECTION 7(m).—

(1) PROGRAM LEVELS.—For the programs authorized by this Act, the Administration is authorized to make during each of fiscal years 2010 and 2011—

(A) $80,000,000 in technical assistance grants, as provided in section 7(m); and

(B) $110,000,000 in direct loans, as provided in section 7(m).

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(i) PART A OF TITLE III OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.—

(1) PROGRAM LEVELS 2010.—For fiscal year 2010, in carrying out the program authorized by part A of title III of the Small

Business Investment Act of 1958, the Administrator is authorized to make $5,000,000,000 in guarantees of debentures.

(2) PROGRAM LEVELS 2011.—For fiscal year 2011, in carrying out the program authorized by part A of title III of the Small Business Investment Act of 1958, the Administrator is authorized to make $5,5000,000,000 in guarantees of debentures.

(j) FISCAL YEARS 2010 AND 2011 WITH RESPECT TO SECTION 7(b).—There is authorized to be appropriated such sums as may be necessary for administrative expenses and loans under section 7(b).

[(j)**]** *(k)* FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

(1) * * *

* * * * * * *

SEC. 40. COMPREHENSIVE DISASTER RESPONSE PLAN.

(a) PLAN REQUIRED.—The Administrator shall develop, implement, **[**or**]** *and* maintain a comprehensive written disaster response plan. The plan shall include the following:

(1) * * *

* * * * * * *

(d) REGIONAL DISASTER WORKING GROUPS.—In carrying out subsection (a), the Administrator, acting through the regional administrators of the regional offices of the Administration, shall develop a disaster preparedness and response plan for each region of the Administration. Each such plan shall be developed in cooperation with Federal, State, and local emergency response authorities and representatives of businesses located in the region to which such plan applies. Each such plan shall identify and include a plan relating to the 3 disasters, natural or manmade, most likely to occur in the region to which such plan applies.

[(d)**]** *(e)* REPORT.—The Administrator shall include a report on the plan whenever the Administration submits the report required by section 43.

* * * * * * *

SEC. 44. APPELLATE PROCESS AND OMBUDSMAN.

(a) APPELLATE PROCESS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of the Small Business Financing and Investment Act of 2009, the Administrator shall establish an independent appellate process within the Administration. The process shall be available to review material determinations made by the Administration that affect a lender or investment company that participates or is applying to participate in a program administered by the Administration.

(2) REVIEW PROCESS.—In establishing the independent appellate process under paragraph (1), the Administrator shall ensure that—

(A) any appeal of a material determination by the Administration is heard and resulting recommendations are provided expeditiously; and

(B) appropriate safeguards exist for protecting the appellant from retaliation by Administration employees.

(3) COMMENT PERIOD.—Not later than 180 days after the date of the enactment of the Small Business Financing and Investment Act of 2009, the Administrator shall provide an opportunity for notice and comment on proposed guidelines for the establishment of an independent appellate process under this section.

(b) AGENCY OMBUDSMAN.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of the Small Business Financing and Investment Act of 2009, the Administrator shall appoint an ombudsman.

(2) DUTIES.—The ombudsman appointed in accordance with paragraph (1) shall—

(A) act as a liaison between the Administration and any lender or investment company that participates or is applying to participate in a program administered by the Administration with respect to a problem such entity may have in dealing with the Administration resulting from a material determination made by the Administration; and

(B) ensure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(c) OTHER AUTHORITY.—An individual carrying out the independent appellate process established under subsection (a) or the position of ombudsman established under subsection (b) is authorized to—

(1) examine records and documents relating to a matter under review pursuant to such subsections; and

(2) initiate the review of a matter under such subsections if such individual believes that Administration procedures have not been followed as intended with respect to such matter, without regard to whether an appeal or complaint has been made.

(d) LIMITATIONS.—

(1) IN GENERAL.—An individual carrying out the independent appellate process established under subsection (a) or the position of ombudsman established under subsection (b) may not, as a result of the authority provided under this section—

(A) make, change, or set aside a law, policy, or administrative decision;

(B) make binding decisions or determine rights;

(C) directly compel an entity to implement the recommendations of such individual; or

(D) accept jurisdiction over an issue that is pending in a legal forum.

(2) RULE OF CONSTRUCTION.—Activities carried out under this section may not be construed—

(A) as a formal investigation, formal hearing, or binding decision;

(B) as limiting any remedy or right of appeal;

(C) as affecting any procedure concerning grievances, appeals, or administrative matters under law; or

(D) as a substitute for an administrative or judicial proceeding.

(e) REPORT.—Not later than one year after the date of the enactment of the Small Business Financing and Investment Act of 2009 and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing and providing the status of appeals made under subsection (a) and complaints made under subsection (b).

(f) DEFINITIONS.—In this section, the following apply:

(1) MATERIAL DETERMINATION.—The term "material determination" includes determinations relating to—

(A) applications for payment relating to a loan guarantee; and

(B) the ability of an entity to participate in an Administration loan or investing program.

(2) INDEPENDENT APPELLATE PROCESS.—The term "independent appellate process" means a review by an Administration official who does not directly or indirectly report to the Administration official who made the material determination under review.

SEC. 45. LOAN GUARANTEES FOR HEALTH INFORMATION TECHNOLOGY.

(a) DEFINITIONS.—As used in this section:

(1) The term "health information technology" means computer hardware, software, and related technology that supports the meaningful EHR use requirements set forth in section 1848(o)(2)(A) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)(A)) and is purchased by an eligible professional to aid in the provision of health care in a health care setting, including, but not limited to, electronic medical records, and that provides for—

(A) enhancement of continuity of care for patients through electronic storage, transmission, and exchange of relevant personal health data and information, such that this information is accessible at the times and places where clinical decisions will be or are likely to be made;

(B) enhancement of communication between patients and health care providers;

(C) improvement of quality measurement by eligible professionals enabling them to collect, store, measure, and report on the processes and outcomes of individual and population performance and quality of care;

(D) improvement of evidence-based decision support; or

(E) enhancement of consumer and patient empowerment.

Such term shall not include information technology whose sole use is financial management, maintenance of inventory of basic supplies, or appointment scheduling.

(2) The term "eligible professional" means any of the following:

(A) A physician (as defined in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(B) A practitioner described in section 1842(b)(18)(C) of that Act.

(C) A physical or occupational therapist or a qualified speech-language pathologist.

(D) A qualified audiologist (as defined in section 1861(ll)(3)(B)) of that Act.

(E) A qualified medical transcriptionist who is either certified by or registered with the Association for Healthcare Documentation Integrity, or a successor association thereto.

(F) A State-licensed pharmacist.

(G) A State-licensed supplier of durable medical equipment, prosthetics, orthotics, or supplies.

(3) The term "qualified eligible professional" means an eligible professional whose office can be classified as a small business concern by the Administrator for purposes of this Act under size standards established under section 3 of this Act.

(4) The term "qualified medical transcriptionist" means a specialist in medical language and the healthcare documentation process who interprets and transcribes dictation by physicians and other healthcare professionals to ensure accurate, complete, and consistent documentation of healthcare encounters.

(b) LOAN GUARANTEES FOR QUALIFIED ELIGIBLE PROFESSIONALS.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator may guarantee up to 90 percent of the amount of a loan made to a qualified eligible professional to be used for the acquisition of health information technology for use in such eligible professional's medical practice and for the costs associated with the installation of such technology. Except as otherwise provided in this section, the terms and conditions that apply to loans made under section 7(a) of this Act shall apply to loan guarantees made under this section.

(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

(A) $350,000 with respect to any single qualified eligible professional; and

(B) $2,000,000 with respect to a single group of affiliated qualified eligible professionals.

(c) FEES.—(1) The Administrator may impose a guarantee fee on the borrower for the purpose of reducing the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) of the guarantee to zero in an amount not to exceed 2 percent of the total guaranteed portion of any loan guaranteed under this section. The Administrator may also impose annual servicing fees on lenders not to exceed 0.5 percent of the outstanding balance of the guarantees on lenders' books.

(2) No service fees, processing fees, origination fees, application fees, points, brokerage fees, bonus points, or other fees may be charged to a loan applicant or recipient by a lender in the case of a loan guaranteed under this section.

(d) DEFERRAL PERIOD.—Loans guaranteed under this section shall carry a deferral period of not less than 1 year and not more than 3 years. The Administrator shall have the authority to subsidize interest during the deferral period.

(e) EFFECTIVE DATE.—No loan may be guaranteed under this section until the meaningful EHR use requirements have been determined by the Secretary of Health and Human Services.

(f) SUNSET.—No loan may be guaranteed under this section after the date that is 5 years after meaningful EHR use requirements have been determined by the Secretary of Health and Human Services.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) of guaranteeing $10,000,000,000 in loans under this section. The Administrator shall determine such program cost separately and distinctly from other programs operated by the Administrator.

SEC. [44.] *46.* All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

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DIVISION A—APPROPRIATIONS PROVISIONS

* * * * * * *

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

* * * * * * *

SMALL BUSINESS ADMINISTRATION

* * * * * * *

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

SEC. 501. FEE REDUCTIONS. (a) ADMINISTRATIVE PROVISIONS SMALL BUSINESS ADMINISTRATION.—Until [September 30, 2010] *September 30, 2011*, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and section 502 of this title, for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

(1) * * *

* * * * * * *

(c) APPLICATION OF FEE ELIMINATIONS.—

(1) * * *

[(2) The Administrator shall eliminate fees under subsections (a) and (b) until the amount provided for such purposes, as applicable, under the heading "Business Loans Program Account" under the heading "Small Business Administration" under this Act are expended.]

SEC. 502. ECONOMIC STIMULUS LENDING PROGRAM FOR SMALL BUSINESSES. (a) * * *

* * * * * * *

(f) SUNSET.—Loan guarantees may not be issued under this section after [the date 12 months after the date of enactment of this Act] *September 30, 2011.*

* * * * * * *

SEC. 506. BUSINESS STABILIZATION PROGRAM. (a) IN GENERAL.—Subject to the availability of appropriations, the Administrator of the Small Business Administration shall carry out a program to provide loans on a deferred basis to viable (as such term is determined pursuant to regulation by the Administrator of the Small Business Administration) small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship. *In carrying out such program, the Administrator shall establish and utilize a one-page application for loans under this section and shall authorize lenders to utilize the same documentation and procedural requirements for loans under this section as such lenders utilize for other loans of a similar size and type.*

* * * * * * *

(c) QUALIFYING SMALL BUSINESS LOAN.—A loan made to a small business concern that meets the eligibility standards in section 7(a) of the Small Business Act (15 U.S.C. 636(a)) [but shall not include loans guarantees (or loan guarantee commitments made) by the Administrator prior to the date of enactment of this Act].

(d) LOAN SIZE.—Loans guaranteed under this section may not exceed [$35,000] *$50,000*.

* * * * * * *

(j) SUNSET.—The Administrator of the Small Business Administration shall not issue loan guarantees under this section after [September 30, 2010] *September 30, 2011.*

* * * * * * *

SEC. 509. ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.

(a) * * *

* * * * * * *

(c) RESPONSIBILITIES, AUTHORITIES, ORGANIZATION, AND LIMITATIONS.—

(1) DESIGNATION OF SYSTEMICALLY IMPORTANT SBA SECONDARY MARKET BROKER-DEALERS.—The Administrator shall establish a process to designate, in consultation with the Board of Governors of the Federal Reserve and the Secretary of the Treasury, Systemically Important Secondary Market Broker-Dealers. *Such process shall include the designation of each lender participating in a program under section 7(a) of the Small Business Act as a Systematically Important Secondary Market Broker-Dealer for purposes of this section.*

* * * * * * *

[(e) DURATION.—The authority of this section shall remain in effect for a period of 2 years after the date of enactment of this section.]

[(f)] *(e)* FEES.—The Administrator shall charge fees, up front, annual, or both at a specified percentage of the loan amount that is at such a rate that the cost of the program under the Federal Credit Reform Act of 1990 ((title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661) shall be equal to zero. *To the extent that the cost of an elimination or reduction of fees is offset by appropriations, the Administrator shall in lieu of the fee otherwise applicable under this subsection collect no fee or reduce fees to the maximum extent possible.*

[(h)] *(f)* BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Im poundment Control Act of 1974; 2 U.S.C. 661 and following).

[(i)] *(g)* EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall promulgate regulations under this section within 30 days after the date of enactment of enactment of this section. In promulgating these regulations,the Administrator the notice requirements of section 553(b) of title 5 of the United States Code shall not apply.

* * * * * * *

SMALL BUSINESS INVESTMENT ACT OF 1958

TITLE I—SHORT TITLE, STATEMENT OF POLICY, AND DEFINITIONS

* * * * * * *

DEFINITIONS

SEC. 103. As used in this Act—

(1) * * *

* * * * * * *

[(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;]

(6) the term "development company" means any corporation organized in order to promote economic development and the growth of small business concerns and includes companies chartered under a special State law authorizing them to operate on a statewide basis;

* * * * * * *

(13) the term "qualified nonprivate funds" means any—

(A) * * *

* * * * * * *

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed [33 percent] *45 percent* of the private capital of the applicant or licensee;

* * * * * * *

(18) the term "Energy Saving debenture" means a deferred interest debenture that—

(A) * * *

* * * * * * *

(E) is issued at no cost (as defined in section 502 of the Credit Reform Act of 1990) with respect to purchasing and guaranteeing the debenture; **[**and**]**

(19) the term "Energy Saving qualified investment" means investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources **[**.**]***;*

(20) the term "certified development company" means a development company that the Administrator has determined meets the criteria set forth in section 501;

(21) the term "local governmental entity" means—

(A) a State or a political subdivision of a State; or

(B) a combination of political subdivisions which—

(i) has been formed to promote economic or community development;

(ii) is composed of representatives of the State or a political subdivision acting in their official capacity; and

(iii) includes an area in an adjacent State if it is part of a local economic area, a rural area, or has a population determined by the Administrator to be insufficient to support the formation of a separate development company;

such term includes entities meeting the requirements of clauses (i) through (iii), such as, but not limited to, a council of governments, regional development corporation, regional planning commission, or economic development district;

(22) the term "member" means any person authorized to vote for a director of a corporation or the dissolution or merger of a company (for purposes of this definition, a shareholder of a for-profit corporation shall be considered a member);

(23) the terms "rural" and "rural area" shall have the same meaning as those terms are given in section 1991(a)(13)(A) of title 7, United States Code;

(24) the term "small manufacturer" means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(B) all of the production facilities of which are located in the United States; and

(25) for purposes of the terms "small-business concern" in paragraph (5) and "smaller enterprise" in paragraph (12), tangible net worth shall, to the extent used, mean the total net worth of the small business, in accordance with General Accepted Accounting Principles, minus all intangibles in accordance with General Accepted Accounting Principles.

* * * * * * *

TITLE III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

SEC. 301. (a) * * *

* * * * * * *

(d) LICENSES FOR EXPERIENCED APPLICANTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, not later than 60 days after the initial receipt by the Administrator of any request (which shall be deemed to be the application) for a license to operate as a small business investment company under this Act, the Administrator shall approve the request and issue such license if each of the following requirements is satisfied:

(A) At least 50 percent of the principal managers of the applicant consist of at least two-thirds of the principal managers of a small business investment company that has been licensed under this Act.

(B) The licensed small business investment company specified under subparagraph (A) has operated under such license for at least 3 years prior to the receipt of the request specified in this paragraph.

(C) The licensed small business investment company specified under subparagraph (A)—

(i) either has invested at least 70 percent of its private capital and drawn at least 50 percent of its projected leverage at the time of the receipt of the request specified in this paragraph or reserved for investment and expenses or some combination of both at least 70 percent of its private capital in the one-year period prior to the date on which the application referred to in this paragraph was received by the Administrator;

(ii) has maintained 6 consecutive quarters of profitable net investment income; and

(iii) has made at least 3 exits from investments in small businesses that have realized profits from those respective investments.

(D) The applicant submits to the Administrator, in writing, an application consisting of all of the following:

(i) A certification, in the form prescribed by the Administrator, that such applicant satisfies the requirements of this subsection and that all information contained in the application is true and complete.

(ii) A copy of the organizational documents of the applicant.

(iii) A copy of the operating plan of the applicant demonstrating that at least 50 percent of the amount of the planned investments of the applicant will be in the same or substantially similar investment stage and use the same or substantially similar type of investment instruments as the investments of the licensed small business investment company specified under subparagraph (A).

(iv) A certification, in a form prescribed by the Administrator, that the applicant satisfies the requirements of subsections (a) and (c) of section 302 of this Act.

(E) The applicant is in good standing as set forth in paragraph (2).

(F) The applicant pays all fees prescribed by the Administrator under subsection (e).

(2) GOOD STANDING.—For purposes of this subsection, an applicant is in good standing if—

(A) a licensed leveraged debentured or non-leveraged small business investment company specified under paragraph (1)(A) is actively operating under this Act on the date of the initial receipt of the application by the Administrator to which this subsection applies;

(B) no principal manager of the applicant has been found liable in a civil action for fraud if the Administrator makes a reasonable determination based on evidence in the agency record that such liability has a material adverse effect on the ability of the applicant to perform obligations required by a license issued pursuant to this Act; and

(C) no principal manager is under investigation by a governmental agency or authority for, is under indictment for, or has been convicted of a felony for a violation of Federal or State securities laws, fraud, or another criminal violation if such investigation, indictment, or conviction has a material adverse effect on the ability of the applicant to perform obligations under a license issued under this Act.

(3) LIMITATION.—

(A) IN GENERAL.—The Administrator may remove an application from the approval process under this subsection if the Administrator determines based on evidence in the agency record that the approval of the license would present an unacceptable risk to the Federal Government.

(B) IN WRITING.—Such determination shall be made in writing and provided to the applicant no later than 10 calendar days after such determination is made. Failure to provide this determination to the applicant shall be deemed to be a permanent waiver of the Administrator's authority to remove an application pursuant to this subsection.

(C) NON-DELEGABILITY.—The Administrator may rely on agency personnel to collect data or other material relevant to establishing a record, but the decision to remove the application may not be delegated by the Administrator to any subordinate personnel in the agency.

(4) NOTICE AND OPPORTUNITY TO CURE NON-CONFORMANCE.—

(A) NOTICE OF NON-CONFORMANCE.—Except for a determination made pursuant to paragraph (3), the Administrator shall provide an applicant described in paragraph (1) within 60 days after receipt of the application a written notice and description of any nonconformance with any requirement of this subsection based on evidence in the agency record.

(B) OPPORTUNITY TO CURE.—The applicant shall have 30 days following the receipt of notice of nonconformance or

the receipt of removal as set forth in paragraph (3) to cure such nonconformance.

(C) FAILURE TO PROVIDE NOTICE.—Failure to provide the notice within the time limit set forth in subparagraph (A) shall be deemed to be acceptance by the Administrator of the applicant's conformance with the requirements of this subsection.

(5) BACKGROUND REVIEWS.—The Administrator shall ensure that a timely background check of the principal managers of each applicant is completed with respect to paragraphs (2)(B) and (2)(C).

(6) FEES.—The Administrator may charge an applicant additional fees for carrying out the background reviews mandated by paragraph (5). Such fees shall not exceed $10,000.

(7) EFFECT OF NON-QUALIFICATION.—The failure of an applicant to qualify for expedited licensure under this subsection shall have no effect on an existing license or the ability for the applicant or any of its individual managers to apply for or receive a license to operate a small business investment company under the procedures established elsewhere in this Act or its implementing regulations.

(8) REGULATIONS.—The Administrator shall develop forms and promulgate regulations to implement this subsection after providing an opportunity for notice and comment. Regulations promulgated pursuant to this paragraph shall be published in the Code of Federal Regulations.

* * * * * * *

BORROWING POWER

SEC. 303. (a) * * *

(b) To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Ad-

ministration, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing debentures under this Act, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) * * *

[(2) Maximum leverage.—

[(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 301(c) of this Act may not exceed the lesser of—

[(i) 300 percent of such company's private capital; or

[(ii) $150,000,000.

[(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 301(c) of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed $225,000,000.]

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—(i) The maximum amount of outstanding leverage made available to any one company licensed under section 301(c) of this Act may not exceed the lesser of—

(I) 300 percent of such company's private capital; or

(II) $150,000,000.

(ii) In applying clause (i)(I) in the case of a debenture licensee which is in good standing without the imposition of additional regulatory standards and whose financings at cost are comprised of at least 50 percent of loans and debt securities, such licensee may be leveraged as follows:

(I) The first one-third of private capital to 300 percent.

(II) The second one-third of private capital to 200 percent.

(III) The last third of private capital to 100 percent.

(iii) Notwithstanding clause (i), in the case of any company operating as a business development company (as such term is defined under section 2(a)(48) of the Investment Company Act of 1940) or a majority-owned subsidiary of such a company that is in good standing without the imposition of additional regulatory requirements, the maximum amount of outstanding leverage made available to such company shall be $250,000,000.

(B) MULTIPLE LICENSEES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more debenture companies licensed under section 301(c) of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed $350,000,000.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS *AND VETERANS*.—(i) In calculating the outstanding leverage of a

company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351) *or in a small business concern owned and controlled by veterans (as such term is defined in section 3(q)(3) of the Small Business Act)*, to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii) The maximum amount of outstanding leverage made available to—

(I) * * *

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed [$250,000,000] *$400,000,000*.

(iii) A company described in this clause is a company licensed under section 301(c) in the first fiscal year after the date of enactment of this clause or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351) *or in small business concerns owned and controlled by veterans (as such term is defined in section 3(q)(3) of the Small Business Act)*.

* * * * * * *

(E) REGULATIONS.—The Administrator shall promulgate regulations, after notice and opportunity for comment, establishing quantifiable objective criteria under which a licensee's private capital in its entirety may be leveraged up to 300 percent. Such regulations shall be published in the Code of Federal Regulations.

* * * * * * *

(d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises. *A licensee shall not be required to achieve any percentage of such financings (at cost) which is higher than 25 percent which may result from the application of prior statutory or regulatory requirements to all or any portion of the licensee's portfolio.*

(e) CAPITAL IMPAIRMENT.—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

(1) * * *

* * * * * * *

A licensee with Earmarked Assets (as that term is defined by the Administrator) will not be in capital impairment during the first 72 months after its date of licensure, if its impairment does not exceed 85 percent.

* * * * * * *

LONG-TERM LOANS TO SMALL-BUSINESS CONCERNS

SEC. 305. (a) * * *

* * * * * * *

(c) The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: *Provided,* That the Administration also shall permit those companies which have issued debentures pursuant to this Act to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration. *In addition to the foregoing, with respect to a loan made, or debt with equity features acquired, under this section, the minimum coupon rate of interest (cost of money ceiling) imposed by the Administrator shall not be less than 19 percent per annum for a loan or a debt security, except that nothing herein shall alter or affect provisions permitting higher coupon rates of interest (cost of money ceilings) and a company may charge up to an additional 7 percent more than the interest rate set forth in the loan or debt security in the event of a default. For purposes of this subsection a default means the occurrence of any of the following:*

(1) Failure to pay an amount when due.

(2) Failure to provide in a timely manner material information required under the applicable financing documents.

(3) Failure to observe any material term, covenant, or other agreement contained in the applicable financing documents.

(4) A representation, warranty, certification, or statement of fact made by or on behalf of a borrower in any applicable financing document or in any document delivered in connection therewith, that was materially incorrect or misleading when made.

(5) Any material event of default specified in the applicable financing documents.

* * * * * * *

(g) A company may require a small business concern to accept reasonable and customary minimum prepayment amounts, terms, and notice requirements.

(h) The private capital of a licensee may include funds transferred to an account of the Telecommunications Development Fund created pursuant to section 714 of the Communications Act of 1934 (47 U.S.C. 614) and which are described in section 309(j)(8)(C)(iii) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(C)(iii)).

(i) The authorization to make loans under subsection (a) includes the authority to engage in venture leasing, equipment leasing, real estate sale leasebacks, and similar arrangements with small business concerns, so long as such arrangements have an economic purpose similar to traditional loans. Any transaction covered by this subsection involving real property shall require the occupancy of at least 50 percent of the real property by the small business concern.

* * * * * * *

SEC. 321. INVESTMENT WITH CERTAIN PASSIVE ENTITIES.

A licensee may provide financing to a passive business as defined under section 107.720(b)(1) of title 13, Code of Federal Regulations,

as in effect on January 1, 2009, which is a corporation or limited liability company wholly-owned by the licensee and the sole purpose of which is to provide financing by the licensee to such concerns would cause investors in the licensee to incur with respect to regulated investment companies, income not qualifying under section 851(b)(2)(A) of the Internal Revenue Code of 1986. Nothing in this section shall affect the validity of regulations permitting financings of passive businesses previously duly promulgated by the Administrator.

SEC. 322. AGENCY RECORD FOR LICENSING OF SMALL BUSINESS INVESTMENT COMPANIES.

(a) RECORD.—The Associate Administrator for Investment shall establish an agency record of evidence referring or relating to each application for a license to become a small business investment company.

(b) WRITTEN NOTIFICATION.—The Administrator shall provide a written explanation of any denial of a license application based upon evidence in the agency record. Absent an order by a Federal or State court of general jurisdiction, access to applications and the agency record shall be limited to the applicant and to the Administrator and subordinate personnel of the Administrator.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 351. DEFINITIONS.

In this part, the following definitions apply:

(1) DEVELOPMENTAL VENTURE CAPITAL.—The term "developmental venture capital" means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas *or encouraging the growth or continuation of small business concerns located in low-income geographic areas and engaged primarily in manufacturing*. For the purposes of this paragraph, the term "equity capital" has the same meaning given such term in section 303(g)(4).

[(2) LOW-INCOME INDIVIDUAL.—The term "low-income individual" means an individual whose income (adjusted for family size) does not exceed—

[(A) for metropolitan areas, 80 percent of the area median income; and

[(B) for nonmetropolitan areas, the greater of—

[(i) 80 percent of the area median income; or

[(ii) 80 percent of the statewide nonmetropolitan area median income.

[(3) LOW-INCOME GEOGRAPHIC AREA.—the term "low-income geographic area" means—

[(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

[(i) the poverty rate for that census tract is not less than 20 percent;

[(ii) in the case of a tract—

[(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

[(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

[(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

[(B) any area located within—

[(i) a HUBZone (as defined in section 3(p) of the Small Business Act and the implementing regulations issued under that section);

[(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

[(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).]

(2) LOW-INCOME GEOGRAPHIC AREA.—The term "low-income geographic area" has the meaning given the term "low-income community" in section 45D(e) of the Internal Revenue Code of 1986.

* * * * * * *

[(4)] *(3)* NEW MARKETS VENTURE CAPITAL COMPANY.—The term "New Markets Venture Capital company" means a company that—

(A) * * *

* * * * * * *

[(5)] *(4)* OPERATIONAL ASSISTANCE.—The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development *or assistance that assists a small business concern located in a low-income geographic area and engaged primarily in manufacturing with retooling, updating, or replacing machinery or equipment*.

[(6)] *(5)* PARTICIPATION AGREEMENT.—The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 354(e), that—

(A) * * *

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas *or in small business concerns located in low-income geographic areas at least 80 percent of which are engaged primarily in manufacturing*.

[(7)] *(6)* SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term "specialized small business investment company" means any small business investment company that—

(A) * * *

* * * * * * *

[(8)] *(7)* STATE.—The term "State" means such of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

SEC. 352. PURPOSES.

The purposes of the New Markets Venture Capital Program established under this part are—

(1) * * *

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas *and small business concerns located in low-income geographic areas and engaged primarily in manufacturing*, to be administered by the Administrator—

(A) * * *

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas *or in small business concerns located in low-income geographic areas and engaged primarily in manufacturing*; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises *and small business concerns* financed, or expected to be financed, by such companies.

SEC. 353. ESTABLISHMENT.

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, [under which the Administrator may] *under which the Administrator shall—*

(1) * * *

* * * * * * *

SEC. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

(a) ELIGIBILITY.—A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

(1) * * *

* * * * * * *

(3) the company has a primary objective of economic development of low-income geographic areas *or investing in small business concerns located in low-income geographic areas and engaged primarily in manufacturing*.

(b) APPLICATION.—To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas *or in small business concerns located in low-income geographic areas and engaged primarily in manufacturing*;

* * * * * * *

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises *or small business concerns* financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;

* * * * * * *

(d) REQUIREMENTS TO BE MET FOR FINAL APPROVAL.—The Administrator shall grant each conditionally approved company [a period of time, not to exceed 2 years,] *2 years* to satisfy the following requirements:

(1) CAPITAL REQUIREMENT.—[Each]

(A) IN GENERAL.—Except as provided in subparagraph (B), each conditionally approved company shall raise not less than $5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(B) SMALL BUSINESS CONCERNS ENGAGED PRIMARILY IN MANUFACTURING.—Each conditionally approved company engaged primarily in development of and investment in small business concerns located in low-income geographic areas and engaged primarily in manufacturing shall raise not less than $3,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

(A) IN GENERAL.—In order to provide operational assistance to smaller enterprises *or small business concerns* expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator; *and*

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); [and]

[(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);]

* * * * * * *

(f) GEOGRAPHIC EXPANSION.—From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria and promotion of nationwide distribution under subsection (c) and shall, to the extent practicable, approve at least one company from each geographic region of the Small Business Administration.

* * * * * * *

SEC. 358. OPERATIONAL ASSISTANCE GRANTS.

(a) IN GENERAL.—

(1) AUTHORITY.—In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises *and small business concerns* financed, or expected to be financed, by such companies or other entities.

* * * * * * *

(4) GRANT AMOUNT.—

(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The amount of a grant made under this subsection to a New Markets Venture Capital company [shall be equal to the resources (in cash or in kind) raised by the company under section 354(d)(2).] *shall be equal to the lesser of—*

(i) 10 percent of the resources (in cash or in-kind) raised by the company under section 354(d)(2); or

(ii) $1,000,000.

* * * * * * *

(6) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

(A) IN GENERAL.—Subject to the provisions of this paragraph, upon the request of a company conditionally approved under section 354(c), the Administrator shall make a grant to the company under this subsection.

(B) REPAYMENT BY COMPANIES NOT APPROVED.—If a company receives a grant under this paragraph and does not receive final approval under section 354(e), the company shall repay the amount of the grant to the Administrator.

(C) DEDUCTION FROM GRANT TO APPROVED COMPANY.—If a company receives a grant under this paragraph and receives final approval under section 354(e), the Administrator shall deduct the amount of such grant from the amount of any immediately succeeding grant the company receives for operational assistance.

(D) AMOUNT OF GRANT.—No company may receive a grant of more than $50,000 under this paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises *and small business concerns* financed, or expected to be financed, by the companies.

* * * * * * *

SEC. 368. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for [fiscal years 2001 through 2006] *fiscal years 2010 and 2011*, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee [$150,000,000] *$100,000,000* of debentures under this part*, of which not less than 50 percent shall be used to guarantee debentures of companies engaged primarily in development of and investment in small business concerns located in low-income geographic areas and engaged primarily in manufacturing*.

(2) [$30,000,000] *$20,000,000* to make grants under this part*, of which not less than 50 percent shall be used to make grants to companies engaged primarily in development of and investment in small business concerns located in low-income geographic areas and engaged primarily in manufacturing*.

* * * * * * *

PART C—[RENEWABLE FUEL CAPITAL INVESTMENT PILOT] *RENEWABLE ENERGY CAPITAL INVESTMENT* PROGRAM

SEC. 381. DEFINITIONS.

In this part:

(1) OPERATIONAL ASSISTANCE.—The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development*, assistance that assists a small business concern to reduce energy consumption, or assistance that assists a small business concern engaged primarily in manufacturing with retooling, updating, or replacing machinery or equipment*.

(2) PARTICIPATION AGREEMENT.—The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 384(e), that—

(A) * * *

(B) requires the company to make investments in [smaller enterprises] *small business concerns* primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

* * * * * * *

(4) [RENEWABLE FUEL CAPITAL INVESTMENT] *RENEWABLE ENERGY CAPITAL INVESTMENT* COMPANY.—The term "[Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company" means a company—

(A) * * *

* * * * * * *

SEC. 382. PURPOSES.

The purposes of the [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in [smaller enterprises] *small business concerns* primarily engaged such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of [smaller enterprises] *small business concerns* engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies;

(B) to guarantee debentures of [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies to enable each such company to make venture capital investments in [smaller enterprises] *small business concerns* engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to [smaller enterprises] *small business concerns* financed, or expected to be financed, by such companies.

SEC. 383. ESTABLISHMENT.

The Administrator shall establish a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* Program, [under which the Administrator may] *under which the Administrator shall—*

(1) * * *

(2) guarantee the debentures issued by [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies as provided in section 385.

SEC. 384. SELECTION OF [RENEWABLE FUEL CAPITAL INVESTMENT] *RENEWABLE ENERGY CAPITAL INVESTMENT* COMPANIES.

(a) ELIGIBILITY.—A company is eligible to apply to be designated as a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company if the company—

(1) * * *

* * * * * * *

(3) has a primary objective of investment in [smaller enterprises] *small business concerns* that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) APPLICATION.—A company desiring to be designated as a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in [smaller enterprises] *small business concerns* primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

* * * * * * *

(3) a description of how the company intends to seek to address the unmet capital needs of the [smaller enterprises] *small business concerns* served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to [smaller enterprises] *small business concerns* financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

* * * * * * *

(c) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies.

* * * * * * *

(d) REQUIREMENTS TO BE MET FOR FINAL APPROVAL.—

(1) * * *

* * * * * * *

(3) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

(A) IN GENERAL.—In order to provide operational assistance to [smaller enterprises] *small business concerns* expected to be financed by the company, each conditionally approved company shall have binding commitments (for contribution in cash or in-kind)—

(i) * * *

* * * * * * *

(e) FINAL APPROVAL; DESIGNATION.—The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the applicant to operate as a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company under this part and designate the applicant as such a company, if the applicant—

(A) * * *

* * * * * * *

SEC. 385. DEBENTURES.

(a) IN GENERAL.—The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company.

* * * * * * *

(d) MAXIMUM GUARANTEE.—

(1) IN GENERAL.—Under this section, the Administrator may guarantee the debentures issued by a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

* * * * * * *

SEC. 386. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

(a) ISSUANCE.—The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

* * * * * * *

SEC. 387. FEES.

(a) IN GENERAL.—Except as provided in section 386(d), the Administrator may charge such fees as it determines appropriate with respect to any guarantee [or grant] issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this part, which amounts shall be paid to and retained by the Administration.

* * * * * * *

SEC. 388. FEE CONTRIBUTION.

(a) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies under section 387.

* * * * * * *

SEC. 389. OPERATIONAL ASSISTANCE GRANTS.

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may make grants to [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies to provide operational assistance to [smaller enterprises] *small business concerns* financed, or expected to be financed, by such companies or other entities.

* * * * * * *

(3) GRANT AMOUNT.—The amount of a grant made under this subsection to a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company shall be equal to the lesser of—

(A) * * *

* * * * * * *

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make supplemental grants to [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to [smaller enterprises] *small business concerns* financed, or expected to be financed, by the companies.

* * * * * * *

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company.

SEC. 390. BANK PARTICIPATION.

(a) IN GENERAL.—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company, or in any entity established to invest solely in [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* companies.

* * * * * * *

SEC. 391. FEDERAL FINANCING BANK.

Notwithstanding section 318, the Federal Financing Bank may acquire a debenture issued by a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company under this part.

SEC. 392. REPORTING REQUIREMENT.

Each [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) * * *

* * * * * * *

SEC. 393. EXAMINATIONS.

(a) IN GENERAL.—Each [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

* * * * * * *

SEC. 394. MISCELLANEOUS.

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 309, 311, 312, and 314 and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company shall be subject to the requirements of such sections.

SEC. 395. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 313 (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any [Renewable Fuel Capital Investment] *Renewable Energy Capital Investment* company.

* * * * * * *

SEC. 397. AUTHORIZATIONS OF APPROPRIATIONS *AND PROGRAM LEVELS*.

(a) IN GENERAL.—Subject to the availability of appropriations, the Administrator is authorized to make $15,000,000 in operational assistance grants under section 389 for each of fiscal years 2008 and 2009 *and $30,000,000 in such grants for each of fiscal years 2010 and 2011.*

* * * * * * *

(c) PROGRAM LEVELS.—For the programs authorized by this part, the Administration is authorized to make $1,000,000,000 in guarantees of debentures for each of fiscal years 2010 and 2011.

[SEC. 398. TERMINATION.

[The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.]

PART D—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

SEC. 399A. ESTABLISHMENT OF PROGRAM.

The Administrator shall establish and carry out an early-stage investment program (hereinafter referred to in this part as the "program") to provide equity investment financing to support early-stage small businesses in targeted industries in accordance with this part.

SEC. 399B. ADMINISTRATION OF PROGRAM.

The program shall be administered by the Administrator acting through the Associate Administrator described under section 201.

SEC. 399C. APPLICATIONS.

(a) IN GENERAL.—Any incorporated body, limited liability company, or limited partnership organized and chartered or otherwise existing under Federal or State law for the purpose of performing the functions and conducting the activities contemplated under the program and any small business investment company may submit to the Administrator an application to participate in the program.

(b) REQUIREMENTS FOR APPLICATION.—An application to participate in the program shall include the following:

(1) A business plan describing how the applicant intends to make successful venture capital investments in early-stage small businesses in targeted industries.

(2) Information regarding the relevant venture capital investment qualifications and backgrounds of the individuals responsible for the management of the applicant.

(3) A description of the extent to which the applicant meets the selection criteria under section 399D.

(c) APPLICATIONS FROM SMALL BUSINESS INVESTMENT COMPANIES.—The Administrator shall establish an abbreviated application process for small business investment companies that have received a license under section 301 and that are applying to participate in the program. Such abbreviated process shall incorporate a presumption that such small business investment companies satisfactorily meet the selection criteria under paragraphs (3) and (5) of section 399D(b).

SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT COMPANIES.

(a) IN GENERAL.—Not later than 90 days after the date on which the Administrator receives an application from an applicant under section 399C, the Administrator shall make a final determination to approve or disapprove such applicant to participate in the program and shall transmit such determination to the applicant in writing.

(b) SELECTION CRITERIA.—In making a determination under subsection (a), the Administrator shall consider each of the following:

(1) The likelihood that the applicant will meet the goals specified in the business plan of the applicant.

(2) The likelihood that the investments of the applicant will create or preserve jobs, both directly and indirectly.

(3) The character and fitness of the management of the applicant.

(4) The experience and background of the management of the applicant.

(5) The extent to which the applicant will concentrate investment activities on early-stage small businesses in targeted industries.

(6) The likelihood that the applicant will achieve profitability.

(7) The experience of the management of the applicant with respect to establishing a profitable investment track record.

SEC. 399E. GRANTS.

(a) IN GENERAL.—The Administrator may make one or more grants to a participating investment company.

(b) GRANT AMOUNTS.—

(1) NON-FEDERAL CAPITAL.—A grant made to a participating investment company under the program may not be in an amount that exceeds the amount of the capital of such company that is not from a Federal source and that is available for investment on or before the date on which a grant is drawn upon. Such capital may include legally binding commitments with respect to capital for investment.

(2) LIMITATION ON AGGREGATE AMOUNT.—The aggregate amount of all grants made to a participating investment company under the program may not exceed $100,000,000.

(c) GRANT PROCESS.—In making a grant under the program, the Administrator shall commit a grant amount to a participating in-

vestment company and the amount of each such commitment shall remain available to be drawn upon by such company—

(1) for new-named investments during the 5-year period beginning on the date on which each such commitment is first drawn upon; and

(2) for follow-on investments and management fees during the 10-year period beginning on the date on which each such commitment is first drawn upon, with not more than 2 additional 1-year periods available at the discretion of the Administrator.

SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSINESSES IN TARGETED INDUSTRIES.

(a) IN GENERAL.—As a condition of receiving a grant under the program, a participating investment company shall make all of the investments of such company in small business concerns, of which at least 50 percent shall be early-stage small businesses in targeted industries.

(b) EVALUATION OF COMPLIANCE.—With respect to a grant amount committed to a participating investment company under section 399E, the Administrator shall evaluate the compliance of such company with the requirements under this section if such company has drawn upon 50 percent of such commitment.

SEC. 399G. PRO RATA INVESTMENT SHARES.

Each investment made by a participating investment company under the program shall be treated as comprised of capital from grants under the program according to the ratio that capital from grants under the program bears to all capital available to such company for investment.

SEC. 399H. GRANT INTEREST.

(a) GRANT INTEREST.—

(1) IN GENERAL.—As a condition of receiving a grant under the program, a participating investment company shall convey a grant interest to the Administrator in accordance with paragraph (2).

(2) EFFECT OF CONVEYANCE.—The grant interest conveyed under paragraph (1) shall have all the rights and attributes of other investors attributable to their interests in the participating investment company, but shall not denote control or voting rights to the Administrator. The grant interest shall entitle the Administrator to a pro rata portion of any distributions made by the participating investment company equal to the percentage of capital in the participating investment company that the grant comprises. The Administrator shall receive distributions from the participating investment company at the same times and in the same amounts as any other investor in the company with a similar interest. The investment company shall make allocations of income, gain, loss, deduction, and credit to the Administrator with respect to the grant interest as if the Administrator were an investor.

(b) MANAGER PROFITS.—As a condition of receiving a grant under the program, the manager profits interest payable to the managers of a participating investment company under the program shall not exceed 20 percent of profits, exclusive of any profits that may accrue as a result of the capital contributions of any such managers with respect to such company. Any excess of this amount, less taxes pay-

able thereon, shall be returned by the managers and paid to the investors and the Administrator in proportion to the capital contributions and grants paid in. No manager profits interest (other than a tax distribution) shall be paid prior to the repayment to the investors and the Administrator of all contributed capital and grants made.

(c) DISTRIBUTION REQUIREMENTS.—As a condition of receiving a grant under the program, a participating investment company shall make all distributions to all investors in cash and shall make distributions within a reasonable time after exiting investments, including following a public offering or market sale of underlying investments.

SEC. 399I. FUND.

There is hereby created within the Treasury a separate fund for grants which shall be available to the Administrator subject to annual appropriations as a revolving fund to be used for the purposes of the program. All amounts received by the Administrator, including any moneys, property, or assets derived by the Administrator from operations in connection with the program, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to the operations of the Administrator under the program shall be paid from the fund.

SEC. 399J. APPLICATION OF OTHER SECTIONS.

To the extent not inconsistent with requirements under this part, the Administrator may apply sections 309, 311, 312, 313, and 314 to activities under this part and an officer, director, employee, agent, or other participant in a participating investment company shall be subject to the requirements under such sections.

SEC. 399K. DEFINITIONS.

In this part, the following definitions apply:

(1) EARLY-STAGE SMALL BUSINESS IN A TARGETED INDUSTRY.—The term "early-stage small business in a targeted industry" means a small business concern that—

(A) is domiciled in a State;

(B) has not generated gross annual sales revenues exceeding $15,000,000 in any of the previous 3 years; and

(C) is engaged primarily in researching, developing, manufacturing, producing, or bringing to market goods, products, or services with respect to any of the following business sectors:

(i) Agricultural technology.
(ii) Energy technology.
(iii) Environmental technology.
(iv) Life science.
(v) Information technology.
(vi) Digital media.
(vii) Clean technology.
(viii) Defense technology.

(2) PARTICIPATING INVESTMENT COMPANY.—The term "participating investment company" means an applicant approved under section 399D to participate in the program.

(3) SMALL BUSINESS CONCERN.—The term "small business concern" has the same meaning given such term under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out the program $200,000,000 for the first full fiscal year beginning after the date of the enactment of this part.

* * * * * * *

TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

[STATE DEVELOPMENT COMPANIES

[SEC. 501. (a) The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title.

[(b) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

[(c) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

[(d) In order to qualify for assistance under this title, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

[(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

[(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

[(3) the achievement of one or more of the following public policy goals:

[(A) business district revitalization,

[(B) expansion of exports,

[(C) expansion of minority business development or women-owned business development,

[(D) rural development,

[(E) expansion of small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), especially service-disabled veterans, as defined in such section 3(q),

[(F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

[(G) changes necessitated by Federal budget cutbacks, including defense related industries,

[(H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,

[(I) reduction of energy consumption by at least 10 percent,

[(J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact, or

[(K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria. In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

[(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every $65,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

[(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every $65,000 guaranteed by the Administration.

[(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

[(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

[(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

[(6) As used in this subsection, the term "small manufacturer" means a small business concern—

[(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

[(B) all of the production facilities of which are located in the United States.

[LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION

[SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however,* That the foregoing powers shall be subject to the following restrictions and limitations:

[(1) USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

[(2) MAXIMUM AMOUNT.—

[(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

[(i) $1,500,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

[(ii) $2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3);

[(iii) $4,000,000 for each project of a small manufacturer;

[(iv) $4,000,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

[(v) $4,000,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

[(B) DEFINITION.—As used in this paragraph, the term "small manufacturer" means a small business concern—

[(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

[(ii) all of the production facilities of which are located in the United States.

[(3) CRITERIA FOR ASSISTANCE.—

[(A) IN GENERAL.—Any development company assisted under this section or section 503 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

[(B) COMMUNITY INJECTION FUNDS.—

[(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

[(I) State or local governments;

[(II) banks or other financial institutions;

[(III) foundations or other not-for-profit institutions; or

[(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title.

[(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

[(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title shall provide—

[(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

[(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

[(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

[(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

[(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

[(E) COLLATERALIZATION.—

[(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this title, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

[(ii) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

[(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than $250,000; or

[(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is $250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

[(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

[(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

[(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this title shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

[(7) PERMISSIBLE DEBT REFINANCING.—

[(A) IN GENERAL.—Any financing approved under this title may include a limited amount of debt refinancing.

[(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

[(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

[(ii) the existing indebtedness is collateralized by fixed assets;

[(iii) the existing indebtedness was incurred for the benefit of the small business concern;

[(iv) the financing under this title will be used only for refinancing existing indebtedness or costs relating to the project financed under this title;

[(v) the financing under this title will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

[(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

[(vii) the financing under section 504 will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

[DEVELOPMENT COMPANY DEBENTURES

[SEC. 503. (a)(1) Except as provided in subsection (b), the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

[(2) Such guarantees may be made on such terms and conditions as the Administration may by regulation determine to be appropriate: *Provided,* That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: *Provided further,* That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

[(3) The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

[(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

[(b) No guarantee may be made with respect to any debenture under subsection (a) unless—

[(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 502;

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

[(3) the interest rate on such debentures is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 303(b);

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

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

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

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

[(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

[(i) the lesser of —

[(I) 0.9375 percent per year of the outstanding balance of the loan; and

[(II) the minimum amount necessary to reduce the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this Act to zero; and

[(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year

period beginning on October 1, 2002, for the life of the loan; and

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

[(c)(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

[(2) Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 504 which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

[(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 504 which is not funded by a debenture guaranteed under this section.

[(d) CHARGES FOR ADMINISTRATION EXPENSES.—

[(1) LEVEL OF CHARGES.—The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

[(2) PARTICIPATION FEE.—The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 502(3)(B)(i). Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

[(3) DEVELOPMENT COMPANY FEE.—The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

[(e)(1) For purposes of this section, the term "qualified State or local development company" means any State or local development company which, as determined by the Administration, has—

[(A) a full-time professional staff;

[(B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

[(C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

[(2) A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

[Sec. 503 (e)(3). Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under Section 7(a) of the Small Business Act, to service such loans and to charge a reasonable fee for servicing such loans.

[(f) EFFECTIVE DATE.—The fees authorized by subsections (b) and (d) shall apply to financings approved by the Administration on or after October 1, 1996.

[(g) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this Act.

[(h) REQUIRED ACTIONS UPON DEFAULT.—

[(1) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

[(A) take all necessary steps to bring such a loan current; or

[(B) implement a formal written deferral agreement.

[(2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the administration shall take all necessary steps to purchase or accelerate the debenture.

[(3) PREPAYMENT PENALTIES.—With respect to the portion of any project derived from funds set forth in section 502(3), the Administration—

[(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

[(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

[(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

[(i) TWO-YEAR WAIVER OF FEES.—The Administration may not assess or collect any up front guarantee fee with respect to loans made under this title during the 2-year period beginning on October 1, 2002.

[PRIVATE DEBENTURE SALES

[SEC. 504. (a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 503 of this title as follows:

[(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000.

[(2) Of the program levels otherwise authorized by law for fiscal years 1987 and 1988, an amount not to exceed $425,000,000.

[(3) All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

[(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

[(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 503 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

[(2) any obligation which is an interest in any obligation described in paragraph (1); or

[(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

[POOLING OF DEBENTURES

[SEC. 505. (a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this Act: *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

[(b) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

[(c) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

[(d) The Administration shall not collect any fee for any guarantee under this section: *Provided,* That nothing herein shall pre-

clude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

[(e)(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

[(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

[(f)(1) The Administration shall—

[(A) provide for a central registration of all trust certificates sold pursuant to this section;

[(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

[(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

[(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

[(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

[RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE

[SEC. 506. Notwithstanding any other provisions of law: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this title or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this title nor shall it include any condition or impose any requirement, directly or indirectly upon any recipient of assistance under this title: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

[SEC. 507. ACCREDITED LENDERS PROGRAM.

[(a) ESTABLISHMENT.—The Administration is authorized to establish an Accredited Lenders Program for qualified State and local

development companies that meet the requirements of subsection (b).

[(b) REQUIREMENTS.—The Administration may designate a qualified State or local development company as an accredited lender if such company—

[(1) has been an active participant in the Development Company Program authorized by sections 502, 503, and 504 for not less than the preceding 12 months;

[(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for such Development Company Program;

[(3) has the ability to process, close, and service financing for plant and equipment under such Development Company Program;

[(4) has a loss rate on the company's debentures that is reasonable and acceptable to the Administration;

[(5) has a history of submitting to the Administration complete and accurate debenture guaranty application packages; and

[(6) has demonstrated the ability to serve small business credit needs for financing plant and equipment through the Development Company Program.

[(c) EXPEDITED PROCESSING OF LOAN APPLICATIONS.—The Administration shall develop an expedited procedure for processing a loan application or servicing action submitted by a qualified State or local development company that has been designated as an accredited lender in accordance with subsection (b).

[(d) SUSPENSION OR REVOCATION OF DESIGNATION.—

[(1) IN GENERAL.—The designation of a qualified State or local development company as an accredited lender may be suspended or revoked if the Administration determines that—

[(A) the development company has not continued to meet the criteria for eligibility under subsection (b); or

[(B) the development company has failed to adhere to the Administration's rules and regulations or is violating any other applicable provision of law.

[(2) EFFECT.—A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

[(e) DEFINITION.—For purposes of this section, the term "qualified State or local development company" has the same meaning as in section 503(e).

[SEC. 508. PREMIER CERTIFIED LENDERS PROGRAM.

[(a) ESTABLISHMENT.—The Administration may establish a Premier Certified Lenders Program for certified development companies that meet the requirements of subsection (b).

[(b) REQUIREMENTS.—

[(1) APPLICATION.—To be eligible to participate in the Premier Certified Lenders Program established under subsection (a), a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

[(2) DESIGNATION.—The Administration may designate a certified development company as a premier certified lender—

[(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

[(B) if the company has a history of—

[(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

[(ii) of properly closing section 504 loans and servicing its loan portfolio;

[(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company); and

[(D) the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

[(3) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

[(c) LOSS RESERVE.—

[(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

[(2) AMOUNT.—The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

[(3) ASSETS.—Each loss reserve established under paragraph (1) shall be comprised of—

[(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

[(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

[(C) any combination of the assets described in subparagraphs (A) and (B).

[(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve, either cash or letters of credit as pro-

vided above, in the following amounts and at the following intervals:

[(A) 50 percent when a debenture is closed.

[(B) 25 percent additional not later than 1 year after a debenture is closed.

[(C) 25 percent additional not later than 2 years after a debenture is closed.

[(5) REPLENISHMENT.—If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

[(6) DISBURSEMENTS.—

[(A) IN GENERAL.—The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

[(B) TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.—Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

[(7) ALTERNATIVE LOSS RESERVE.—

[(A) ELECTION.—With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

[(B) CONTRIBUTIONS.—

[(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

[(ii) BASED ON LOSS.—A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

[(I) not less than $100,000; and

[(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

[(iii) CERTIFICATION.—Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

[(C) DISBURSEMENTS.—

[(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply with respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

[(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

[(I) the amount of the loss reserve, over

[(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

[(D) RECONTRIBUTION.—If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

[(E) RISK MANAGEMENT.—If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

[(F) QUALIFIED HIGH LOSS RESERVE PCL.—The term "qualified high loss reserve PCL" means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

[(i) the amount of the loss reserve of the company is not less than $100,000;

[(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

[(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

[(G) SPECIFIED RISK MANAGEMENT BENCHMARKS.—For purposes of this paragraph, the term "specified risk management benchmarks" means the following rates, as determined by the Administrator:

[(i) Currency rate.

[(ii) Delinquency rate.

[(iii) Default rate.

[(iv) Liquidation rate.

[(v) Loss rate.

[(H) QUALIFIED INDEPENDENT AUDITOR.—For purposes of this paragraph, the term "qualified independent auditor" means any auditor who—

[(i) is compensated by the qualified high loss reserve PCL;

[(ii) is independent of such PCL; and

[(iii) has been approved by the Administrator during the preceding year.

[(I) PCLP LOAN.—For purposes of this paragraph, the term "PCLP loan" means any loan guaranteed under this section.

[(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term "eligible calendar quarter" means—

[(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

[(ii) the 7 succeeding calendar quarters.

[(K) CALENDAR QUARTER.—For purposes of this paragraph, the term "calendar quarter" means—

[(i) the period which begins on January 1 and ends on March 31 of each year;

[(ii) the period which begins on April 1 and ends on June 30 of each year;

[(iii) the period which begins on July 1 and ends on September 30 of each year; and

[(iv) the period which begins on October 1 and ends on December 31 of each year.

[(L) REGULATIONS.—Not later than 45 days after the date of the enactment of this paragraph, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

[(i) the approval of auditors under subparagraph (H); and

[(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

[(8) BUREAU OF PCLP OVERSIGHT.—

[(A) ESTABLISHMENT.—There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

[(B) PURPOSE.—The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

[(C) DEADLINE.—Not later than 90 days after the date of the enactment of this Act—

[(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

[(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

[(d) SALE OF CERTAIN DEFAULTED LOANS.—

[(1) NOTICE.—If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

[(2) LIMITATIONS.—The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

[(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

[(B) provides the notice required by paragraph (1).

[(e) LOAN APPROVAL AUTHORITY.—

[(1) IN GENERAL.—Notwithstanding section 503(b)(6), and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

[(2) SCOPE OF REVIEW.—The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 503(a), but such final approval shall not include review of

decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

[(f) REVIEW.—After the issuance and sale of debentures under this section, the Administration, at intervals not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

[(g) SUSPENSION OR REVOCATION.—The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

[(1) has not continued to meet the criteria for eligibility under subsection (b);

[(2) has not established or maintained the loss reserve required under subsection (c);

[(3) is failing to adhere to the Administration's rules and regulations; or

[(4) is violating any other applicable provision of law.

[(h) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

[(i) PROGRAM GOALS.—Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

[(j) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

[(1) the number of certified development companies designated as premier certified lenders;

[(2) the debenture guarantee volume of such companies;

[(3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and

[(4) such other information as the Administration deems appropriate.

[SEC. 509. PREPAYMENT OF DEVELOPMENT COMPANY DEBENTURES.

[(a) IN GENERAL.—

[(1) PREPAYMENT AUTHORIZED.—Subject to the requirements set forth in subsection (b), an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this Act may, at the election of the borrower (in the case of a loan under section 503) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.

[(2) PROCEDURE.—

[(A) IN GENERAL.—In making a prepayment under paragraph (1)—

[(i) the borrower (in the case of a loan under section 503) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

[(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

[(B) REPURCHASE PREMIUM.—

[(i) IN GENERAL.—For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of—

[(I) the unpaid principal balance due on the debenture on the date of prepayment; and

[(II) the applicable percentage rate, as determined in accordance with clauses (ii) and (iii).

[(ii) APPLICABLE PERCENTAGE RATE.—For purposes of clause (i)(II), the applicable percentage rate means—

[(I) with respect to a 10-year term loan, 8.5 percent;

[(II) with respect to a 15-year term loan, 9.5 percent;

[(III) with respect to a 20-year term loan, 10.5 percent; and

[(IV) with respect to a 25-year term loan, 11.5 percent.

[(iii) ADJUSTMENTS TO APPLICABLE PERCENTAGE RATE.—The percentage rates described in clause (ii) shall be increased or decreased by the Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103–317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

[(b) REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are that—

[(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

[(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) of this section under the programs authorized by this title, are used to prepay or roll over the debenture; and

[(3) with respect to a debenture issued under section 503, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

[(c) NO PREPAYMENT FEES OR PENALTIES.—No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

[(d) REFINANCING LIMITATIONS.—

[(1) IN GENERAL.—The refinancing of a debenture under sections 504 and 505, in accordance with subsection (b)(2)—

[(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

[(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 504 and 505 and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 505.

[(2) JOB CREATION.—An applicant for refinancing under section 504 of a loan made pursuant to section 503 shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

[(3) LOAN PROCESSING FEE.—To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

[(4) NEW DEBENTURES.—Issuers of debentures under title III may issue new debentures in accordance with such title in order to prepay existing debentures as authorized in this section.

[(5) PRELIMINARY NOTICE.—

[(A) IN GENERAL.—The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this title. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of $1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

[(B) DEFINITION.—For purposes of this paragraph, the term "borrower", in the case of a small business investment company or a specialized small business investment company, means "issuer".

[(6) FINAL NOTICE.—Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

[(e) DEFINITIONS.—For purposes of this section—

[(1) the term "issuer" means—

[(A) the qualified State or local development company that issued a debenture pursuant to section 503, which has been purchased by the Federal Financing Bank; and

[(B) a small business investment company licensed pursuant to section 301; or

[(2) the term "borrower" means a small business concern whose loan secures a debenture issued pursuant to section 503.

[(f) REGULATIONS.—Not later than 30 days after the date of enactment of this section, the Administration shall promulgate such regulations as may be necessary to carry out this section.

[(g) AUTHORIZATION.—There are authorized to be appropriated $30,000,000 to carry out the provisions of The Small Business Prepayment Penalty Relief Act of 1994.

[SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.

[(a) DELEGATION OF AUTHORITY.—In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 503(e)) that meets the eligibility requirements of subsection (b)(1) the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 503.

[(b) ELIGIBILITY FOR DELEGATION.—

[(1) REQUIREMENTS.—A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) if—

[(A) the company—

[(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

[(ii) is participating in the Premier Certified Lenders Program under section 508; or

[(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 503; and

[(B) the company—

[(i) has one or more employees—

[(I) with not less than 2 years of substantive, decision-making experience in administering the

liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 503; and

[(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

[(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

[(2) CONFIRMATION.—On request the Administration shall examine the qualifications of any company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

[(c) SCOPE OF DELEGATED AUTHORITY.—

[(1) IN GENERAL.—Each qualified State or local development company to which the Administration delegates authority under section (a) may with respect to any loan described in subsection (a)—

[(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

[(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

[(i) defend or bring any claim if—

[(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 502; or

[(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

[(ii) oversee the conduct of any such litigation; and

[(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

[(2) ADMINISTRATION APPROVAL.—

[(A) LIQUIDATION PLAN.—

[(i) IN GENERAL.—Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

[(ii) ADMINISTRATION ACTION ON PLAN.—

[(I) TIMING.—Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

[(II) NOTICE OF NO DECISION.—With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

[(iii) ROUTINE ACTIONS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

[(B) PURCHASE OF INDEBTEDNESS.—

[(i) IN GENERAL.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

[(ii) ADMINISTRATION ACTION ON REQUEST.—

[(I) TIMING.—Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

[(II) NOTICE OF NO DECISION.—With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

[(C) WORKOUT PLAN.—

[(i) IN GENERAL.—In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

[(ii) ADMINISTRATION ACTION ON PLAN.—

[(I) TIMING.—Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

[(II) NOTICE OF NO DECISION.—With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

[(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

[(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

[(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

[(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

[(i) shall be in writing;

[(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

[(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

[(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

[(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

[(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

[(1) does not meet the requirements of subsection (b)(1);

[(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

[(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

[(e) REPORT.—

[(1) IN GENERAL.—Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

[(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following information:

[(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

[(i) the total cost of the project financed with the loan;

[(ii) the total original dollar amount guaranteed by the Administration;

[(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

[(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

[(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

[(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

[(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

[(D) A comparison between—

[(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

[(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

[(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.]

SEC. 501. CERTIFIED DEVELOPMENT COMPANIES.

(a) CERTIFIED DEVELOPMENT COMPANY DEBENTURE AUTHORITY.—Only development companies certified by the Administrator shall have the authority to issue debentures under this Act.

(b) CERTIFICATION STANDARDS.—A development company shall be certified for the purposes of issuing debentures if the Administrator determines that it meets each of the following criteria:

(1) SMALL CONCERN.—

(A) IN GENERAL.—Except as provided in subparagraph (C) of paragraph (2), the company, including its affiliates, shall have no more than 200 employees.

(B) CONTROL.—Except as provided in paragraph (2) (B) or (C) the company shall not be under the control of any other concern.

(C) NOT FOR PROFIT.—The development company is organized as a not-for-profit corporation.

(2) EXCEPTIONS.—

(A) FOR PROFIT STATUS.—If a development company was chartered as a for-profit corporation and issued debentures prior to January 1, 1987, the company shall not be re-

quired to change its status to not-for-profit in order to be certified.

(B) AFFILIATION GRANDFATHER.—Any company that was authorized by the Administrator to issue debentures before December 31, 2005, shall be eligible for certification without regard to its status as part of, or its affiliation with, any other not-for-profit corporation or local governmental entity unless that not-for-profit corporation or local governmental entity is another entity that issues debentures under this title.

(C) AFFILIATION WITH LOCAL GOVERNMENTAL ENTITIES.—Any company that was organized after the date of enactment of the Small Business Financing and Investment Act of 2009 shall be eligible for certification without regard to its status as part of or affiliation with any local governmental entity.

(3) GOOD STANDING.—A development company shall be in good standing and comply with all laws, in every State in which it is incorporated or authorized to conduct business.

(4) MEMBERSHIP.—

(A) IN GENERAL.—The development company shall have at least 25 members.

(B) VOTING RIGHTS.—No member shall control more than 10 percent of the total voting power in the development company.

(C) RESIDENCE.—Members must be residents of the State in which the development company is chartered or authorized to do business.

(D) DIVERSITY.—The development company must have at least one member from each of the following:

(i) A local governmental entity.

(ii) A financial institution subject to regulation by a Federal organization belonging to the Federal Financial Institutions Examination Council and that provides long-term fixed asset financing in the commercial market.

(iii) A not-for-profit organization, other than a development company, that is dedicated to promoting economic growth.

(iv) A for-profit business, other than a financial institution described in clause (ii).

(E) EMPLOYMENT STATUS.—Membership in a development company shall not be predicated on employment status and an individual who retired from or was terminated (for reasons other than fraud or the commission of a crime) from an entity described in subparagraph (D) shall be deemed to be from the organization described in that subparagraph.

(5) BOARD OF DIRECTORS.—

(A) IN GENERAL.—The development company's board consists of members and each director receives a majority vote of the members unless the development company is a for-profit corporation in which case the board need not consist entirely of members.

(B) BOARD REPRESENTATION.—There shall be at least one director from not fewer than 3 of the 4 types of organizations specified in paragraph (4)(D) but no single type of organization shall have more than 50 percent representation on the board of the development company. If the development company is a for-profit corporation, financial institution representatives may make up more than 50 percent of the board.

(C) AFFILIATED ENTITY REPRESENTATION RESTRICTIONS.—A development company that is described in paragraph (1)(C) may have any or all of its board members appointed by entities affiliated with the company and may include common members who also serve on the affiliate's board of directors if the appointment of board members was exercised by an affiliate prior to December 31, 2005.

(D) SPECIAL RULE FOR CERTAIN DEVELOPMENT COMPANIES.—The board of directors for any development company issuing debentures before December 31, 2005, and incorporated under a State law requiring, or which is interpreted by the State's legal department as imposing specific requirements on, the number and selection of members, board members, or both, and the rights and privileges conferred by such State law, may adhere to such provisions.

(6) PROFESSIONAL MANAGEMENT AND STAFF.—

(A) IN GENERAL.—The development company shall have full-time independent professional management, including a chief executive officer to manage the daily operations and a full-time professional staff qualified to carry out the functions authorized under this title.

(B) UTILIZATION OF STAFF FROM AFFILIATED ENTITIES.—A development company shall not be denied certification under this section if its chief executive or full-time professional staff is from an affiliated entity as described in paragraph (1)(C).

(C) STAFF UNDER CONTRACT.—The Administrator shall not deny certification to a development company that contracts for its full time staff if one of the following conditions is met:

(i) The development company is located in a rural area, obtains its staff through contract from another development company that is certified by the Administrator and that development company operates in the same or a contiguous State.

(ii) The development company had issued debentures under this title prior to December 31, 2005, and had contracted with a for-profit business concern to provide staffing and management services.

(c) APPLICATIONS.—

(1) DEVELOPMENT COMPANIES ISSUING DEBENTURES BEFORE SEPTEMBER 30, 2009.—

(A) SHORT FORM APPLICATION.—(i) For any development company that issued debentures pursuant to this title before September 30, 2009, the Administrator shall develop, after an opportunity for notice and comment, no later than 90 days after the date of enactment of the Small Business

Financing and Investment Act of 2009, a short-form application that contains sufficient information for the Administrator to determine that the development company currently meets the standards set forth in subsection (b). In developing such application, the Administrator shall be required to limit the amount of paperwork necessary to determine whether the development company meets the standards for certification and may limit the application to the filing of reports previously submitted to the Administrator.

(ii) For those companies that obtain staff through contracts, the application shall include a copy of the contract.

(B) CERTIFICATION DECISION.—(i) The Administrator shall certify the development company if the application demonstrates that the applicant meets the standards in subsection (b). The decision to certify or not approve the request for certification shall be made within 7 business days from the date the initial submission of the application is received by the Administrator. If the Administrator takes no action to approve or disapprove within 7 business days, the application for certification is deemed approved and no further action is required by the Administrator or the development company to obtain certification. If the Administrator disapproves the application, the Administrator shall provide in writing within 3 business days the reasons for the disapproval. If such document is not provided within the time specified, the application is deemed approved and no further action is required by the Administrator or the development company to obtain certification.

(ii) For those development companies that submit contracts under subparagraph (A)(ii), the Administrator is limited in rejecting the application only if the Administrator finds that the entity servicing the applicant is no longer able to provide the employees or services needed by the applicant to perform the functions that would be authorized under this title.

(C) APPLICATION RESUBMITTAL.—If the Administrator disapproves the application for certification and provides a written statement as set forth in subparagraph (B), the development company may file a new application limited solely to addressing the concerns of the Administrator and the certification procedures set forth in subparagraph (B) shall recommence.

(D) APPEALS.—If the Administrator disapproves an application in accordance with the procedures of subparagraphs (B) or (C), the applicant may, within 10 calendar days after receipt of the disapproval, appeal such disapproval. The Administrator shall conduct a hearing to determine such appeal pursuant to sections 554, 556, and 557 of title 5, United States Code, and shall issue a decision not later than 45 days after the appeal is filed. The decision on appeal shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

(E) GRANDFATHERING.—

(i) IN GENERAL.—For the period 2 years after date of enactment of the Small Business Financing and Invest-

ment Act of 2009, any development company that was issuing debentures on or before the date set forth in this clause (i) shall be deemed to be a certified development company.

(ii) COMPLETION OF APPLICATION PROCESS.—The procedures set forth in this paragraph for determining certification shall apply to any development company meeting the qualifications of clause (i).

(iii) EFFECT OF DENIAL.—The denial or rejection of an application for certification as set forth in this subsection shall have no effect on the ability of a development company meeting the qualifications in clause (i) from continuing to issue debentures during the entire two-year period established in that clause.

(iv) FAILURE TO OBTAIN CERTIFICATION.—Any development company that fails to obtain certification in accordance with the procedures set forth in this paragraph during the period set forth in clause (i) shall be considered to be a new development company and the procedures of paragraph (2) shall apply. The authority to issue debentures shall cease for any development company covered by this subparagraph that has failed to obtain certification from the Administrator during the time period set forth in clause (i).

(F) AUTOMATIC QUALIFICATION PROVISION.—If the Administrator fails to implement the certification process set forth in this paragraph, any development company that was issuing debentures before September 30, 2009, pursuant to this title shall be considered certified until such time as the Administrator develops the certification procedures set forth in this paragraph.

(G) SAVINGS CLAUSE.—Any action taken by a development company or the Administrator pursuant to this paragraph shall have no impact on any guarantee of a debenture issued prior to the date of enactment of the Small Business Financing and Investment Act of 2009.

(2) APPLICATION PROCESS FOR NEW DEVELOPMENT COMPANIES.—

(A) IN GENERAL.—For any development company that has not issued debentures prior to September 30, 2009, the Administrator shall develop no later than 180 days after the date of enactment of the Small Business Financing and Investment Act of 2009, after an opportunity for notice and comment, an application form for certification that provides the Administrator with sufficient information to insure that the applicant meets the standards set forth in subsection (b). The Administrator shall certify such development company or reject the application within 60 calendar days from the date the initial submission was received by the Administrator. If the Administrator rejects the application, the Administrator shall provide in writing within 7 business days after the decision, the reason for rejecting the application.

(B) APPEALS.—A development company shall be able to appeal the disapproval of an application under the procedures set forth in paragraph (1)(D).

SEC. 502. OPERATIONAL REQUIREMENTS FOR CERTIFIED DEVELOPMENT COMPANIES.

(a) MAINTENANCE OF STANDARDS FOR CERTIFICATION.—Any company certified pursuant to section 501 shall continue to comply with the requirements of that section to remain certified. The Administrator shall develop a reporting form, which to the extent possible, incorporates other documents and reports already kept by certified development companies, demonstrating their continued compliance. The form shall be developed in a manner that the estimated time for completion shall take no more than 2 hours.

(b) ETHICS AND CONFLICT OF INTERESTS.—

(1) IN GENERAL.—A certified development company, its officers, employees, and contractors shall act ethically and avoid activities which constitute a conflict of interest or appear to constitute a conflict of interest. For purposes of this subsection, conduct that is unethical includes, but is not limited to, the actions specified in section 120.140 of title 13, Code of Federal Regulations, as in effect on January 1, 2009.

(2) BY ASSOCIATES.—An associate may not be an officer, director, or manager of more than 1 certified development company. The term "associate" shall have the same meaning given the term "Associate of a CDC" in section 120.10 of title 13, Code of Federal Regulations, as in effect on January 1, 2009. For the purposes of this subsection, 10 percent shall be substituted wherever section 120.10 of title 13, Code of Federal Regulation uses 20 percent.

(3) BY ENTITIES.—Except as provided in sections 501(b)(5) and 501(b)(6), no person, sole proprietorship, partnership, or corporation shall control or have managerial control of more than one certified development company. Control means any of the following:

(A) The ability to appoint or remove a member of the company or member of its board of directors.

(B) The ability to modify or approve rate or fee changes affecting revenues of the certified development company.

(C) The ability to veto, overrule, or modify decisions of the certified development company's body.

(D) The ability, either directly or contractually, to appoint, hire, reassign, or dismiss those managers and employees responsible for the daily operations of the certified development company.

(E) The ability to access the certified development company's resources or amend its budget.

(F) The ability to control another certified development company pursuant to provisions in a contract.

(c) MEETINGS.—The board of directors of the certified development company shall meet on a regular basis to make policy decisions for the company.

(d) LOAN COMMITTEES.—The board of directors of a certified development company may use a loan committee to process loans in the State in which it operates as well as adjacent local economic areas. Members of the loan committee shall be residents of the cer-

tified development company's State of operation or the adjacent local economic area. Such loan committees shall meet on a periodic basis as set forth by the board of directors.

(e) PROHIBITED CONFLICT IN PROJECT LOANS.—

(1) IN GENERAL.—Certified development companies shall not recommend or approve a guarantee of a debenture that will be collateralized by property being constructed or acquired on which an institution, as provided in section 508(c)(1)(A), will have a first lien position.

(2) EXCEPTION.—The prohibition in paragraph (1) shall not apply to any certified development company that was affiliated with or part of any entity that took a first lien position between October 1, 2003, and September 30, 2005.

(f) AFFILIATION WITH LENDERS OPERATING UNDER SECTION 7 OF THE SMALL BUSINESS ACT.—

(1) PROHIBITION.—No certified development company may invest in, or be an affiliate of, a lender who participates in the loan programs authorized in sections 7(a) and 7(c) of the Small Business Act (15 U.S.C. 636(a) and (c)).

(2) EXCEPTION.—The prohibition in paragraph (1) shall not apply to any certified development company that is affiliated with an entity authorized by the Administrator to operate under section 7(a) of the Small Business Act if such affiliation occurred on or before November 6, 2003.

(3) CREDIT UNION AFFILIATION.—A certified development company shall not lose its status due to an affiliation with an institution regulated by the National Credit Union Administration if the development company was affiliated with such an institution prior to January 1, 2007.

(g) SERVICING AND PACKAGING GUARANTEED LOANS.—A certified development company is authorized to prepare applications for loans under sections 7(a) or 7(c) of the Small Business Act (15 U.S.C. 636(a) or (c)), to service such loans, and to charge a reasonable fee for servicing such loans.

(h) USE OF EXCESS FUNDS.—Any funds generated by a certified development company from the issuance of debentures under this title, the sale of debentures in the private secondary market, or fees described in subsection (g) that remain unexpended after payment of staff, operating, and overhead expenses shall be used by the certified development company for—

(1) operating reserves;

(2) expanding the area in which the certified development company operates through the methods authorized in section 505 (relating to multi-State operation);

(3) investment in other community and local economic development activity or community development primarily in the State from which such funds were generated; or

(4) investment in small business investment companies subject to the limitations in subsection (i).

(i) LIMITATIONS WITH RESPECT TO SMALL BUSINESS INVESTMENT COMPANIES.—A certified development company shall not—

(1) invest excess funds in a small business investment company that the Administrator determines to be capitally impaired as set forth in section 107.1830 of title 13, Code of Federal Regulations, as in effect on January 1, 2009, or any suc-

cessor regulation to that regulation, but may maintain its investment in such company if such investment was made prior to the determination of capital impairment; and

(2) provide a debenture under this title to a small business concern that has financing with a small business investment company in which the certified development company has invested excess funds.

(j) ECONOMIC DEVELOPMENT ACTIVITIES.—A company certified pursuant to this section shall carry out each of the following economic development activities that create or preserve jobs in urban and rural areas:

(1) The company shall provide long-term financing to small business concerns through debentures described in section 506.

(2) The company shall operate any other program to assist small business concerns or communities that promote local economic development and job creation or preservation.

(k) RESTRICTIONS ON ASSISTANCE.—

(1) IN GENERAL.—After the date of enactment of the Small Business Financing and Investment Act of 2009, no certified development company may accept funding from any source, including any Federal agency (as that term is defined in section 551 of title 5, United States Code) if the source imposes—

(A) conditions on the types of small business concerns that a certified development company may provide assistance to under this title; or

(B) conditions or requirements, directly or indirectly, upon any small business concern receiving assistance under this title.

(2) EXCEPTION.—The conditions of subparagraphs (A) and (B) of paragraph (1) shall not apply if the source provides all of the financing that will be provided by the certified development company to the small business concern, provided further that any conditions or restrictions are limited solely to the financing provided by the source of funding.

(l) REVOCATION AND SUSPENSION.—The Administrator may suspend or revoke a certified development company's status if the Administrator determines, after a hearing on the record as set forth in sections 554, 556, and 557 of title 5, United States Code, that the certified development company no longer—

(1) meets the eligibility criteria established under section 501 of this title;

(2) satisfies the operational standards in this section; or

(3) complies with the Administrator's rules, regulations, or provisions of law.

(m) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under subsection (l) shall not affect any outstanding debenture guarantee.

SEC. 503. ACCREDITED LENDERS PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—A certified development company may apply for status to become an accredited certified development company if it meets the operational standards of section 502 and the criteria in subsection (b).

(2) APPLICATION.—The Administrator shall, after opportunity for notice and comment, develop an application for certified de-

velopment companies seeking to become accredited certified development companies.

(3) PROCESSING OF APPLICATION.—The Administrator shall make a determination within 30 days after a complete application has been filed by the certified development company.

(4) REAPPLICATION.—If the Administrator rejects the application, the Administrator shall provide in writing the reasons for the rejection. Any certified development company may reapply which will recommence the processing time limits set forth in paragraph (3), and such reapplication shall be limited to addressing the reasons for rejection. If the Administrator rejects a second application, that shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(b) STANDARDS FOR ACCREDITED CERTIFIED DEVELOPMENT COMPANY PROGRAM.—The Administrator shall designate a certified development company as accredited if it meets the following standards:

(1) Has been a certified development company for not less than the preceding 12 months and has issued debentures as authorized under this title during that time period.

(2) Has well-trained, qualified personnel who are knowledgeable in the lending policies and procedures for certified development companies.

(3) Has the ability to process, close, and service the loan issued under this title.

(4) Has a loss rate on the company's debentures that is reasonable and acceptable to the Administrator.

(5) Has a history of submitting to the Administrator complete and accurate debenture guaranty application packages.

(6) Has the ability to serve small business credit needs for financing plant and equipment as a certified development company.

(c) EXPEDITED PROCESSING OF GUARANTEE APPLICATIONS.—The Administrator shall develop an expedited procedure for processing a guarantee application or servicing action submitted by an accredited certified development company. For purposes of this subsection, an expedited procedure is one that takes at least two business days less than the processing performed for certified development companies that have not been accredited.

(d) SUSPENSION OR REVOCATION OF ACCREDITED STATUS.—The Administrator may suspend or revoke a certified development company's accredited status if the Administrator determines, after a hearing on the record as set forth in sections 554, 556, and 557 of title 5, United States Code, that the certified development company no longer meets the eligibility criteria established under this section (which shall not include a time limit on the term of the certified development company's accredited status) or failed to adhere to the Administrator's rules, regulations, or is violating some other provision of law. Such suspension or revocation shall have no effect on the development company's status as certified.

(e) EFFECT OF SUSPENSION OR REVOCATION ON EXISTING GUARANTEES.—A suspension or revocation of accredited status shall not affect any outstanding debenture guarantee.

(f) GRANDFATHER PROVISION.—Any certified development company that was accredited by the date of enactment of the Small

Business Financing and Investment Act of 2009 shall remain accredited for 24 months after that date. If the certified development company does not have an application for accreditation approved by the Administrator within the 24 months, its accreditation standard shall lapse.

(g) AUTOMATIC QUALIFICATION.—

(1) IN GENERAL.—Until the Administrator develops procedures for granting accredited status, any certified development company that was accredited as of the date of enactment of the Small Business Financing and Investment Act of 2009 shall be deemed to be accredited.

(2) APPLICATIONS.—Any certified development company that satisfies the provision of paragraph (1) shall have 24 months in which to submit the application established by this section for accredited status.

(3) EFFECT WHILE APPLICATION PENDING.—The denial or rejection of an application for accredited status as set forth in this section shall have no effect on the ability of a development company that meets the standard set forth in paragraph (1) from maintaining its status during the 24 months specified in this subsection.

(h) PROMULGATION OF ACCREDITING STANDARDS.—The Administrator shall develop standards for accrediting, suspension, and revocation under the program established by this section only after notice and an opportunity for comment as set forth in section 553(b) of title 5, United States Code. After the development of such standards, the Administrator shall publish such standards in the Code of Federal Regulations.

(i) RULE OF CONSTRUCTION.—Any reference to the term "accredited lender" in any provision of law enacted, or any regulation adopted, prior to the enactment of the Small Business Financing and Investment Act of 2009 shall be deemed to be a reference to the term "accredited certified development company".

SEC. 504. PREMIER CERTIFIED LENDER PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—A certified development company accredited under section 503 may apply for status to become a premier certified development company.

(2) APPLICATION.—The Administrator shall, after opportunity for notice and comment, develop an application for accredited certified development companies seeking to become premier certified development companies.

(3) PROCESSING OF APPLICATION.—The Administrator shall make a determination within 60 days after a complete application has been filed by an accredited certified development company.

(4) REAPPLICATION.—If the Administrator rejects the application, the Administrator shall provide in writing the reasons for the rejection. Any accredited certified development company may reapply which will recommence the processing time limits set forth in paragraph (3), and such reapplication shall be limited to addressing the reasons for rejection. If the Administrator rejects a second application, that shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(b) STANDARDS FOR OBTAINING PREMIER CERTIFIED DEVELOPMENT COMPANY STATUS.—The Administrator shall designate an accredited certified development company as a premier certified development company if the application submitted pursuant to subsection (a) demonstrates that the accredited certified development company meets the following standards:

(1) Has been an accredited certified development company for at least 12 months.

(2) Has submitted to the Administrator adequately analyzed debenture guarantee applications.

(3) Has closed, in a proper manner following the Administrator regulations, loans under this title.

(4) Has serviced its loan portfolio in accordance with the standards set by the Administrator.

(5) Has established a loan loss reserve established in accordance with this section that the Administrator determines is sufficient to meet its obligations to protect the Federal Government from the risk of loss on each debenture guaranteed under this section.

(6) Has agreed, as part of the application and in order to protect the Federal Government against the risk of loss, to the following—

(A) on account of a debenture, the proceeds of which were used to fund a loan approved prior to the date of enactment of the Small Business Financing and Investment Act of 2009, agrees to reimburse the Administrator for 10 percent of any loss sustained by the Administrator as a result of a default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administrator;

(B) on account of a debenture, the proceeds of which were used to fund a loan approved prior to the date of enactment of the Small Business Financing and Investment Act of 2009 and which were issued during the period in which the company had made a selection pursuant to section 508(c)(7) of the Small Business Investment Act of 1958, as in effect on the day before such date of enactment, agrees to reimburse the Administrator for 15 percent of any loss sustained by the Administrator as a result of a default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administrator; or

(C) on account of a debenture, the proceeds of which are used to fund a loan approved on or after the date of enactment of the Small Business Financing and Investment Act of 2009, upon closing, pay to the Administrator a one-time participation fee in the amount equal to the higher of the following:

(i) 0.25 percent of the amount of the debenture.

(ii) A percent of the amount of the debenture equal to 10 percent of the amount of the company's historic loss rate on debentures guaranteed under this section as determined by the Administrator. The rate specified by this clause shall be determined annually based upon the company's loan losses as of close of business

on June 30 and notice of the determination shall be provided to each company not later than August 31. Such rate shall be applicable to loans approved during the fiscal year commencing after the determination is made and shall expire and have no further application after the end of such fiscal year. If no timely determination has been made prior to the commencement of a fiscal year, including the year of enactment of the Small Business Financing and Investment Act of 2009, one may be made after the commencement and it shall be applicable to loans approved during the balance of such fiscal year commencing 30 days after notification to the development company involved.

(c) SUSPENSION OR REVOCATION OF PREMIER STATUS.—The Administrator may suspend or revoke an accredited certified development company's premier status if the Administrator determines, after a hearing on the record as set forth in sections 554, 556, and 557 of title 5, United States Code, that the accredited certified development company no longer meets the eligibility criteria for premier status as established under this section or failed to adhere to the Administrator's rules, regulations, or is violating some other provision of law. Such revocation or suspension shall have no effect on its status as an accredited certified development company.

(d) LOAN LOSS RESERVE.—

(1) ASSETS.—Each loan loss reserve maintained by the premier certified development company for loans made pursuant to the authority in subsection (g)(1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administrator that shall amount to 10 percent of the company's exposure as determined pursuant to subsection (b)(6);

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administrator; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(2) CONTRIBUTIONS.—The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(3) REPLENISHMENT.—If a loss has been sustained by the Administrator, any portion of the loss reserve, and other funds provided by the premier certified development company as necessary, may be used to reimburse the Administrator for the premier certified development company's share of the loss as provided for in subsection (b)(6). If the premier certified development company utilizes the reserve, it shall, within 30 calendar days, replace an equivalent amount of funds.

(4) DISBURSEMENTS.—

(A) IN GENERAL.—The Administrator shall allow the premier certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B) REDUCTION.—The Administrator shall allow the premier certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The reduction authorized by this subparagraph shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (2) with respect to such debenture has been made.

(C) RULE OF CONSTRUCTION.—The provision contained in subparagraph (B) shall be read as if enacted prior to a date 2 years and 90 days after the date of enactment of the Small Business Financing and Investment Act of 2009.

(e) BUREAU OF PREMIER CERTIFIED DEVELOPMENT COMPANY LENDER OVERSIGHT.—

(1) IN GENERAL.—There is hereby established a Bureau of Premier Certified Development Company Lender Oversight in the Office of Lender Oversight at the Administration which shall have responsibility and capability for carrying out oversight of premier certified development companies and such other responsibilities as the Administrator designates.

(2) ANNUAL REVIEW.—The Bureau established in paragraph (1) annually shall review the financing made by each premier certified development company. Such review shall include the premier certified development company's credit decisions and general compliance with the eligibility requirements for each financing approved as a result of its status as a premier certified development company.

(3) RANDOM AUDITS.—The Bureau shall develop and implement a method for sampling the debentures issued by premier certified development companies. Such sampling shall be similar to the random file audits of development companies that utilize the Abridged Submission Method described in chapter 4 of subpart C of Standard Operating Procedure 50 10 (5)(A) as was in effect on March 2, 2009.

(4) REVIEW OF LENDERS PROVIDING SENIOR FINANCING.—

(A) CALCULATION OF LOAN LOSS RATE.—The Bureau shall periodically calculate the loss rate of all debentures approved under this section and shall calculate a loss rate on the basis of the total debentures attributable to projects approved by premier certified development companies in which each lender is a participating lender.

(B) NOTIFICATION.—If the Bureau determines that the loss rate on debentures involving an individual lender exceeds the average for all debentures approved under this section, it shall advise the Administrator.

(5) USE OF REVIEWS AND AUDITS.—The Administrator shall consider the findings under paragraphs (2), (3), and (4) in carrying out the responsibilities under subsection (h).

(f) SALE OF CERTAIN DEFAULTED LOANS.—

(1) NOTICE.—If, upon default in repayment, the Administrator acquires a debenture issued by a premier certified devel-

opment company and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financing, the Administrator shall give prior notice thereof to any premier certified development company which has a contingent liability under this section. The notice shall be given to the premier certified development company as soon as possible after the financing is identified, but not less than 90 days before the date the Administrator first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) LIMITATIONS.—The Administrator shall not offer any loan described in paragraph (1) as part of a bulk sale unless the Administrator—

(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(g) LOAN APPROVAL AUTHORITY.—

(1) IN GENERAL.—A premier certified development company may, under conditions determined by the Administrator in regulations published in the Code of Federal Regulations, issue guarantees on debentures, approve, authorize, close, service, foreclose, litigate (except that the Administrator may monitor conduct of any such litigation), and liquidate loans that are funded with proceeds of a debenture issued by a premier certified development company unless the Administrator advises the company that loans involving a specific institutional lender are to be submitted to the Administrator for further consideration, and approval by the Administrator.

(2) PROGRAM GOALS.—Each premier certified development company shall establish a goal of processing no less than 50 percent of the applications for assistance under this title that the premier certified development company receives. Failure to meet this goal shall have no affect on the company's status as a premier certified development company under this section.

(3) SCOPE OF REVIEW.—The approval of a loan and guarantee of a debenture by a premier certified development company shall be subject to final approval as to the eligibility of any guarantee by the Administrator as set forth in section 506, but such final approval shall not include review of decisions by the premier certified development company involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(h) SUSPENSION OR REVOCATION.—The Administrator may suspend or revoke an accredited certified development company's premier status if the Administrator determines, after a hearing on the record as set forth in sections 554, 556, and 557 of title 5, United States Code, that the accredited certified development company no longer meets the eligibility criteria established under this section, fails to maintain adequate loan loss reserves mandated in this section even if it meets the other eligibility requirements for premier status, or violates the Administrator's rules, regulations, or some other provision of law. The Administrator shall consider the review of the premier certified development company conducted pursuant to subsection (e) in determining whether to suspend or revoke an ac-

credited development company's premier status. Such suspension or revocation shall have no effect on the development company's status as an accredited certified development company.

(i) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation of premier status shall not affect any outstanding debenture guarantee.

(j) RULE OF CONSTRUCTION.—Any reference to the term "premier certified lender" or "PCL" in legislation enacted, or regulations adopted, prior to the enactment of the Small Business Financing and Investment Act of 2009 shall be deemed to be a reference to the term "premier certified development company".

SEC. 505. MULTI-STATE OPERATIONS.

(a) AUTHORIZATION.—The Administrator shall permit an accredited or premier certified development company to make loans or issue debentures in any State that is contiguous to the State of incorporation of that company only if the company—

(1) has members, from each of the States in which it operates with not fewer than 25 members who reside in such States;

(2) has a board of directors that contains not fewer than 2 members from each State in which the company makes loans and issues debentures and are residents of that State;

(3) maintains a separate loan committee to process loans in each expansion State and the members of the loan committee are solely residents of the expansion State; and

(4) files an application developed by the Administrator which provides—

(A) notice of the intention to make loans in multiple States;

(B) a specification of the States in which the company intends to make loans;

(C) a list of members in each expansion State; and

(D) a detailed statement on how the company will comply with the requirements of this subsection.

(b) LOAN COMMITTEES.—The requirements of paragraph (3) of subsection (a) shall not require a development company to establish a loan committee in its State of incorporation or in a local economic area outside the State of incorporation unless such area is part of an expansion State.

(c) REVIEW.—

(1) IN GENERAL.—The Administrator shall review each application for expansion under subsection (a), but such review shall be limited to that information needed to determine whether the company will comply with the requirements of subsection (a).

(2) DEADLINE FOR DECISION.—The Administrator shall make a decision on each application under subsection (a) within 15 calendar days after the receipt of the application. If no such decision is granted, the application is deemed to be approved and no further action is required by the applicant or the Administrator for the company to expand into the States specified in the application.

(3) APPLICATION RESUBMITTAL.—If the Administrator rejects the application for expansion, the Administrator shall provide in writing the reasons for denial within 10 calendar days of the decision. The applicant then may resubmit the application but the review of such resubmitted applications will be limited only

to the areas in which the Administrator found the original application deficient. The deadlines in paragraph (2) shall apply to resubmitted applications.

(4) APPEAL.—If a resubmitted application is denied, the applicant may, within 10 calendar days after receipt of the disapproval, appeal such disapproval. The Administrator shall conduct a hearing to determine such appeal pursuant to sections 554, 556, and 557 of title 5, United States Code, and shall issue a decision not later than 45 days after the appeal is filed. The decision on appeal shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

(d) FAILURE TO DEVELOP APPLICATION.—If the Administrator fails to develop an application as required in subsection (a)(4) within 60 days of the enactment of the Small Business Financing and Investment Act of 2009, an accredited or premier certified development company only need submit the information required in subsection (a) to the Administrator to be deemed eligible to commence operations authorized by this section. Such eligibility shall not be terminated if the Administrator develops an application after the 60-day period set forth in this subsection.

(e) AGGREGATE ACCOUNTING.—An accredited or premier certified development company authorized to operate in multiple States pursuant to this section may maintain an aggregate accounting of all revenue and expenses of the company for purposes of this title.

(f) LOCAL JOB CREATION REQUIREMENTS.—

(1) IN GENERAL.—Any company making loans in multiple States as authorized in this section shall not count jobs created or retained in one State towards any applicable job creation or retention requirements mandated by this title in another State.

(2) APPLICABILITY.—Any company operating under the authority of this section shall be required to meet any job creation or retention requirement of this title on the date that is 2 years after the certified development company closed its first loan in its new State of operation.

(g) CONTIGUOUS STATES.—For the purposes of this section, the States of Alaska and Hawaii shall be deemed to be contiguous to any State abutting the Pacific Ocean. Territories of the United States located in the Pacific Ocean shall be deemed to be contiguous to any State abutting the Pacific Ocean, including Alaska and Hawaii, and territories of the United States located in the Caribbean Sea shall be deemed contiguous to any State abutting the Gulf of Mexico.

(h) EXEMPTION FOR LOCAL ECONOMIC AREAS.—Except as provided in subsection (a)(3) with respect to loan committees, any certified, accredited, or premier development company or applicant operating in a local economic development area that crosses the border of another State shall not be considered to be operating under the provisions of this section and shall not be required to comply with the requirements of this section for multi-State operation.

SEC. 506. GUARANTY OF DEBENTURES.

(a) AUTHORITY TO GUARANTEE.—Except as provided in subsection (c), the Administrator may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by a certified development company.

(b) TERMS AND CONDITIONS OF THE GUARANTEE.—Such guarantees may be made on such terms and conditions as the Administrator may by regulation, published in the Code of Federal Regulations, determine to be appropriate, except that the Administrator shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of the loan made pursuant to subsection (e)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister, if the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

(c) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this section.

(d) SUBORDINATION.—Any debenture issued by a certified development company with respect to which a guarantee is made under this section may be subordinated by the Administrator to any other debenture, promissory note, or other debt or obligation of such company.

(e) STANDARDS FOR ADMINISTRATOR GUARANTEES.—No guarantee may be made with respect to any debenture under this section unless—

(1) the debenture is issued for the purpose of making one or more loans to small business concerns the proceeds of which shall be used for the purposes set forth in section 507;

(2) the interest rate on such debentures is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 303(b);

(3) the aggregate amount of such debenture does not exceed the amount of the loans to be made from the proceeds of such debenture plus, at the election of the borrower, other amounts attributable to the administrative and closing costs of such loans, except for the attorney fees of the borrower;

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

(5) the Administrator, except to the extent provided in section 504 with respect to premier certified development companies, approves each loan to be made from such proceeds; and

(6) with respect to each loan made from the proceeds of such debenture, the Administrator—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

(i) the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; or

(II) the minimum amount necessary to reduce the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the Administrator of purchasing and guaranteeing debentures under this title to zero; and

(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and

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

(f) INTEREST RATES ON COMMERCIAL LOANS.—Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this title which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator who shall publish such rate quarterly in, at a minimum, the Federal Register and on the Administration's website.

(g) DEBENTURE REPAYMENT.—Any debenture that is issued under this section shall provide for the payment of principal and interest on a semiannual basis.

(h) CHARGES FOR ADMINISTRATOR'S EXPENSES.—The Administrator may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under this section. Such administrative expenses may include—

(1) development company fees for processing, closing, servicing, late payment, or loan assumption;

(2) agent or trustee fees for central servicing, underwriters, or debenture funding; and

(3) fees charged by the Administrator for the debenture guaranty and from the certified development company to reduce the subsidy cost.

(i) PARTICIPATION FEE.—The Administrator shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any State or local government, bank, other financial institution, or foundation or not-for-profit institution. Such fee shall be imposed only when the participation of the entity described in the previous sentence will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administrator of making guarantees under this section.

(j) CERTIFIED DEVELOPMENT COMPANY FEE.—The Administrator shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administrator after September 30, 1996. Such fee shall be derived from the servicing fees collected by the certified development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administrator of making guarantees under this section.

(k) EFFECTIVE DATE.—The fees authorized by this section shall apply to any financing approved under this title on or after October 1, 1996.

(l) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administrator under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administrator of purchasing and guaranteeing debentures under this title.

(m) ACTIONS UPON DEFAULT.—

(1) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administrator shall—

(A) take all necessary steps to bring such loan current; or

(B) implement a formal written deferral agreement.

(2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the Administrator shall take all necessary steps to purchase or accelerate the debenture.

(3) PREPAYMENT PENALTIES.—With respect to the portion of any project derived from funds not provided by a debenture issued by a certified development company or borrower, the Administrator—

(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

(C) shall not pay a default interest rate higher than the interest rate on the note prior to the date of default for any project financed after September 30, 1996.

(4) COLLECTION AND SERVICING.—

(A) IN GENERAL.—In the event of the default of any loan and the repurchase of a debenture guaranteed by the Administrator under this title, the Administrator shall continue to delegate to the central servicing agent that was contracted for that service as of January 1, 2009, or successor contractor the authority to collect and disburse all funds or payments received on such defaulted loans, including payments from guarantors or on notes in compromise of the original note. The central servicing agent shall continue to provide an accounting of income and expenses for any such loan on the same basis it does for any other loan issued under this title. The central servicing agent shall make the accounting of income and expenses and reports thereon available as requested by the certified development company that issued the debenture or the Administrator.

(B) EFFECTIVE DATE.—The requirements of subparagraph (A) shall become effective 180 days after the date of enactment of the Small Business Financing and Investment Act of 2009.

SEC. 507. ECONOMIC DEVELOPMENT AND DEBENTURES.

(a) IN GENERAL.—A certified development company shall be prohibited from issuing a debenture under this title unless the project funded with the debenture meets one of the following economic development objectives:

(1) The creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project.

(2) Improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy.

(3) The achievement of one or more of the following public policy goals:

(A) Business district revitalization or expansion of businesses in low-income communities which would be eligible for a new markets tax credit under section 45D(a) of the Internal Revenue Code of 1986, or implementing regulations issued under that section.

(B) Expansion of exports.

(C) Expansion of minority business development or women-owned business development.

(D) Rural development.

(E) Expansion of small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), especially service-disabled veterans, as defined in such section.

(F) Enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports.

(G) Changes necessitated by Federal budget cutbacks, including defense related industries.

(H) Business restructuring arising from federally mandated standards or policies affecting the environment or the safety and health of employees.

(I) Reduction of energy consumption by at least 10 percent.

(J) Increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of nonrenewable resources and minimize environmental impact.

(K) Plant, equipment, and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers.

(4) Debt refinancing to the extent permitted by subsection (d).

(b) JOB CREATION AND RETENTION REQUIREMENTS.—

(1) IN GENERAL.—A project meets the job creation or retention objective set forth in subsection (a)(1) if the project creates or retains one job for every $65,000 guaranteed by the Administrator, except that the amount shall be $100,000 in the case of a project of a small manufacturer.

(2) EXCEPTIONS.—

(A) Paragraph (1) shall not apply to a project for which eligibility is based on the objectives set forth in subsection (a)(2) or (a)(3) if the certified development company's portfolio of outstanding debentures creates or retains one job for every $65,000 guaranteed by the Administrator.

(B) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones, enterprise communities, or labor surplus areas designated by the Administrator, the certified development company's portfolio may average not more than $75,000 per job created or retained.

(C) Loans for projects of small manufacturers shall be excluded from the calculations in subparagraphs (A) and (B).

(c) COMBINATION OF CERTAIN GOALS.—A small business concern that is unconditionally owned by more than 1 individual, or a corporation, the stock of which is owned by more than 1 individual, shall be deemed to have achieved a goal under subsection (a)(3) if a combined ownership share of not less than 51 percent is held by individuals who are in 1 of, or a combination of, the groups described in subparagraphs (C) or (E) of subsection (a)(1).

(d) COMPOSITION OF THE PROJECT.—

(1) IN GENERAL.—The projects described in this section shall include, but not be limited to, plant acquisition, construction, conversion, expansion (including the acquisition of land), equipment and related project costs, or to acquire the stock of a corporation (as long as the value of the loan for the acquisition of the stock does not exceed the fixed asset value attributable to such assets as would be eligible for financing under subsection (a)).

(2) DEBT REFINANCING.—Any financing approved under this title may include a limited amount of debt refinancing if the project involves the expansion of a small business concern.

(3) LIMITATION.—The amount of the existing indebtedness may be refinanced and added to the expansion cost if—

(A) the existing indebtedness does not exceed 50 percent of the project cost of the expansion;

(B) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(C) the existing indebtedness is collateralized by fixed assets;

(D) the existing indebtedness was incurred for the benefit of the small business concern;

(E) the financing under this title will be used only for refinancing existing indebtedness or costs relating to the project financed under this title;

(F) the financing under this title will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(G) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(H) the financing under this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(e) DEFINITION.—For purposes of subparagraphs (J) and (K) of subsection (a)(3), the terms included have the meanings given those terms under the Leadership in Energy and Environmental Design (more generally referred to as LEED) standard for green building certification, as determined by the Administrator through regulation to be published in the Code of Federal Regulations.

SEC. 508. PROJECT FUNDING REQUIREMENTS.

(a) IN GENERAL.—Any project described in section 507 must meet the funding standards set forth in this section.

(b) SIZE OF DEBENTURE.—The Administrator shall only be permitted to guarantee debenture issued by a certified development company up to the following amounts:

(1) $3,000,000 for any project of a small business concern.

(2) $4,000,000 for any project that meets the public policy goals set forth in section 507(a)(3).

(3) $4,000,000 for any project to be located in a low-income community as that term is described in section 507(a)(3)(A).

(4) $8,000,000 for each project of a small manufacturer.

(5) $8,000,000 for each project that reduces the borrower's energy consumption by at least 10 percent.

(6) $8,000,000 for each project that generates renewable energy or renewable fuels, such as, but not limited to, biodiesel or ethanol production.

(7) $10,000,000 for each project for a small business concern that constitutes a major source of employment as that term is used in section 7(b)(3)(E) of the Small Business Act (15 U.S.C. 636(b)(3)(E)).

(c) FUNDING FROM SOURCES OTHER THAN DEBENTURES ISSUED BY CERTIFIED DEVELOPMENT COMPANIES.—

(1) IN GENERAL.—Any project financed pursuant to this title must have the following contributions from parties other than the debenture issued by the certified development company:

(A) FUNDING FROM INSTITUTIONS.—

(i) If a small business concern provides—

(I) the minimum contribution required by subparagraph (B), not less than 50 percent of the total cost of any project financed shall come from State or local governments, banks or other financial institutions, or foundations or other not-for-profit institutions; and

(II) more than the minimum contribution required under subparagraph (B), any excess contribution may be used to reduce the amount required from institutions described in subclause (I), except that the amount provided by such institution may not be reduced to an amount that is less than the amount of the loan made by the Administrator.

(B) FUNDING FROM SMALL BUSINESS CONCERNS.—The small business concern (or its owners, stockholders, or affiliates) that will have a project financed pursuant to this title shall provide—

(i) at least 15 percent of the total cost of the project financed if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves construction of a limited or single purposed building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed and not covered by clauses (i), (ii), or (iii), at the discretion of the certified development company.

(2) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of paragraph (1)(B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administrator.

(3) COLLATERALIZATION.—

(A) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this title, and is only one of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administrator determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(B) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(i) shall be required by the Administrator before disbursement of the loan if the estimated value of that property is more than $400,000; or

(ii) may be required by the Administrator or the lender before disbursement of the loan if the estimated value of that property is $400,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(C) ADJUSTMENT.—The Administrator shall periodically adjust the amount under subparagraph (B) to account for the effects of inflation, provided that no such adjustment shall be less than $50,000.

(4) LIMITATION ON LEASING.—

(A) If the project funded under this section includes the acquisition of a facility or the construction of a new facility, the small business concern—

(i) shall permanently occupy and use not less than 50 percent of the project property; and

(ii) may, on a temporary or permanent basis, lease to others not more than 50 percent of the project property.

(B) For purposes of this paragraph, the term "project property" means—

(i) the building and any exterior areas used in connection with the building or a part thereof and includes all of the parcels of real property included in the project in the aggregate; and

(ii) occupancy and use of the project property by the operating company shall be deemed to be occupancy

and use by the small business concern that received funding under this section.

(d) REGULATIONS.—(1) The Administrator shall promulgate regulations, after notice and comment, to implement the provisions of this section within 60 days after enactment of the Small Business Financing and Investment Act of 2009. The Administrator may limit the comment period to 15 days to meet this deadline.

(2) If the Administrator fails to promulgate the regulations as provided in paragraph (1), all leases entered into, absent clear and convincing evidence of fraud, shall be deemed to be in compliance with the limitations on leasing in this subparagraph for purposes of honoring the guarantee on the debenture issued by the certified development company.

(3) Any regulation of the Administrator or interpretation of any regulation by the Administrator or the Office of Hearings and Appeals that restricts the use of proceeds for leased projects that was in effect on the date of enactment of the Small Business Financing and Investment Act of 2009 shall hereby cease to apply.

(4) Any interpretation of the leasing provisions issued by the Administrator prior to the issuance of regulations required by paragraph (1) shall be considered null and void and may be not be used in any court of competent jurisdiction, be it Federal or State court, to dishonor any guarantee of a debenture issued by a certified development company for a project funded pursuant to this section.

(e) OWNERSHIP CALCULATION.—Ownership requirements to determine the eligibility of a small business concern that applies for funding under this title shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(f) COMBINATION FINANCING.—Financing under this title may be provided to a borrower in the maximum amount provided in this section, and a loan guarantee under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) may be provided to the same borrower in the maximum amount provided in section 7(a)(3)(A) of such Act, to the extent that the borrower otherwise qualifies for such assistance.

(g) RULES FOR DEBENTURES FUNDING PROJECTS IN LOW-INCOME AREAS.—

(1) SIZE STANDARDS.—For purposes of determining the size of a small business concern seeking funds for a project described in subsection (b)(3), the size standard promulgated by the Administrator in section 121.201 of title 13, Code of Federal Regulations, as in effect on January, 1, 2009, or any successor regulation, shall be increased by 25 percent.

(2) PERSONAL LIQUIDITY.—

(A) IN GENERAL.—The amount of personal resources of an owner for a project described in subsection (b)(3) that are excluded from the amount required to reduce the portion of the project funded by the Administrator shall be not less than 25 percent more than that required for funding of any other project described in subsection (b).

(B) DEFINITION.—For purposes of subparagraph (A), the term "owner" means any person that owns not less than 20 percent of the equity or has not less than 20 percent of the

voting rights (in the case of a small business organized as a partnership) of a small business concern seeking funds under this section.

(h) APPLICABILITY OF CREDIT ELSEWHERE AND PERSONAL RESOURCES REGULATIONS.—Except as provided in subsection (c)(1)(B) with respect to project funding, the Administrator shall be prohibited from applying the regulations set forth in sections 120.101 and 120.102 of title 13, Code of Federal Regulations, as in effect on January 1, 2009, or any successor regulation that applies a credit elsewhere or personal resources test to any application for a loan under this title pending or filed after the date of enactment of the Small Business Financing and Investment Act of 2009.

SEC. 509. PRIVATE DEBENTURE SALES AND POOLING OF DEBENTURES.

(a) PRIVATE DEBENTURE SALES.—Notwithstanding any other law, rule, or regulation, the Administrator shall sell to investors, either publicly or by private placement, debentures issued by certified development companies pursuant to this title for the full amount of the program levels authorized in each fiscal year and if there is not authorization of a level, the amount of debentures actually issued.

(b) FEDERAL FINANCING BANK.—Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under this title and which is being sold pursuant to the provisions of this section;

(2) any obligation which is an interest in any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(c) POOLING OF DEBENTURES.—

(1) IN GENERAL.—The Administrator is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by certified development companies and guaranteed under this title if such trust certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(2) GUARANTEE OF TRUST CERTIFICATES.—The Administrator is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee. During the term of the trust certificate, it may be

called for redemption due to prepayment or default of all debentures constituting the pool.

(3) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administrator or its agent pursuant to this section.

(4) PROHIBITION ON GUARANTEE FEE FOR POOLS.—The Administrator shall not collect any fee for any guarantee under this section, provided that nothing herein shall preclude any agent of the Administrator from collecting a fee approved by the Administrator for the functions performed in paragraph (6)(F).

(5) SUBROGATION.—

(A) IN GENERAL.—In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(B) ADMINISTRATOR EXERCISE OF RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(6) CENTRAL REGISTRATION.—

(A) IN GENERAL.—The Administrator shall provide for a central registration of all trust certificates sold pursuant to this section.

(B) CONTRACT.—The Administrator shall contract with an agent to carry out on behalf of the Administrator the central registration functions of this section and the issuance of trust certificates to facilitate pooling.

(C) BOND.—The Administrator shall require the contractor to provide a fidelity bond or insurance in such amounts as is deemed necessary to fully protect the interests of the Government.

(D) DISCLOSURE REQUIREMENTS.—The Administrator shall, prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on terms, conditions, and yield of such instruments.

(E) AUTHORITY TO REGULATE.—The Administrator shall have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(F) BOOK ENTRY PERMITTED.—Nothing in this paragraph shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.

(a) DELEGATION OF AUTHORITY.—In accordance with this section, the Administrator shall delegate to any certified development company that meets the eligibility requirements of subsection (b)(1), the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administrator pursuant to this title.

(b) ELIGIBILITY FOR DELEGATION.—

(1) REQUIREMENTS.—A certified development company shall be eligible for a delegation of authority under subsection (a) if—

(A) the certified development company—

(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), before the enactment of the Small Business Financing and Investment Act of 2009;

(ii) is an accredited or premier certified development company; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under this title; and

(B) the certified development company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decisionmaking experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under this title; and

(II) who have completed a training program on loan liquidation developed by the Administrator in conjunction with a certified development company that meet the requirements of this paragraph; or

(ii) submits to the Administrator documentation demonstrating that the company has contracted with a qualified third party to perform any liquidation activities and secures the approval of the contract by the Administrator with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) CONFIRMATION.—On the request, the Administrator shall examine the qualifications of any certified development company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administrator determines that a company is not eligible, the Administrator shall provide the company, in writing, with the reasons for such ineligibility. The certified development company shall be entitled to request delegated authority and the Administrator shall review the request only to address whether the certified development company has rectified the reasons for the Administrator's original determination of ineligibility.

(c) SCOPE OF DELEGATED AUTHORITY.—

(1) IN GENERAL.—Each certified development company to which the Administrator delegates authority under subsection (a) may with respect to any loan described in subsection (a)—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administrator under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administrator may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administrator's management of the program established under this title; or

(II) the Administrator is entitled to legal remedies not available to a certified development company and such remedies will benefit either the Administrator or the certified development company; and

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administrator under paragraph (2).

(2) ADMINISTRATOR APPROVAL OF PLANS.—

(A) CERTIFIED DEVELOPMENT COMPANY SUBMISSION OF PLANS.—Before carrying out functions described in paragraph (1)(A) or (1)(C), the certified development company shall submit to the Administrator a proposed liquidation plan, any proposal for the Administrator to the purchase of any other indebtedness secured by the property securing a defaulted loan, or a workout plan or any combination thereof.

(B) ADMINISTRATOR APPROVAL PROCEDURES.—

(i) TIMING.—Not later than 15 business days after the plans described in subparagraph (A) are received by the Administrator, the Administrator shall approve or reject the plan.

(ii) NOTICE OF NO DECISION.—With respect to any plan that cannot be approved or denied within the 15-day period required by clause (i), the Administrator shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(C) ROUTINE ACTIONS.—In carrying out the functions described in paragraph (1)(A), a certified development company may undertake routine actions not addressed in a liquidation or workout plan without obtaining additional approval from the Administrator.

(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a certified development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administrator.

(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administrator pursuant to subparagraph (B)(ii) shall—

(i) be in writing stating the specific reasons for which the Administrator was unable to act on the request submitted pursuant to subparagraph (A);

(ii) provide an estimate of the additional time needed for the Administrator to reach a decision on the request; and

(iii) specify any additional information or documentation that the Administrator needs to make a decision but was not provided in the plan submitted by the certified development company.

(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a certified development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third-party lender, associate of a third-party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) SUSPENSION OR REVOCATION OF AUTHORITY.—

(1) IN GENERAL.—The Administrator may revoke or suspend a delegation of authority under this section to a certified development company if the Administrator determines that the company—

(A) does not meet the requirements of subsection (b)(1);

(B) violated any applicable law or rule or regulation of the Administrator that in the estimation of the Administrator requires revocation; or

(C) fails to comply with any reporting that may be established by the Administrator relating to the establishment of eligibility in subsection (b)(1) or carrying out the functions described in subsection (c)(1).

(2) WRITTEN NOTICE.—The Administrator shall provide in writing detailed reason why the delegation of authority was suspended or revoked.

(e) PARTICIPATION IN LIQUIDATION.—

(1) IN GENERAL.—

(A) CONTRACT WITH QUALIFIED THIRD PARTY.—A certified development company which elects not to apply for authority to foreclose and liquidate defaulted loans under this section, or which the Administrator determines to be ineligible for such authority, shall contract with a qualified third party to perform foreclosure and liquidation of defaulted loans in its portfolio.

(B) CONTRACT APPROVAL.—The contract entered into by the certified development company specified in subparagraph (A) shall be contingent upon approval by the Administrator with respect to the qualifications of the contractor and the terms and conditions of liquidation activities. The Administrator shall not unreasonably withhold such approval.

(C) NOTIFICATION OF REJECTION.—If the Administrator rejects the contract, the Administrator shall provide a notice to the certified development company, in writing, explaining the reasons for such rejection within ten business days after submission of the contract.

(D) RESUBMITTAL.—The certified development company shall be permitted to resubmit the contract and the Administrator's review of any such resubmittal shall be limited to insufficiencies described in the notification of rejection.

(E) REGULATIONS.—The Administrator shall promulgate regulations, after notice and opportunity for comment, adopting standards for the approval of qualified third-party contractors within 90 days after the date of enactment of the Small Business Financing and Investment Act of 2009.

(F) FAILURE TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate such regulations, any contract for liquidation entered into by a certified development company under this subsection shall be considered valid for the purposes of this subsection and subsection (f).

(G) EFFECT OF ADMINISTRATOR'S PROMULGATION OF REGULATIONS.—If the Administrator promulgates regulations after the deadline specified in subparagraph (E), those regulations shall not have any retroactive application with respect to contracts that are described in subparagraph (F).

(2) COMMENCEMENT.—This subsection shall not require any certified development company to liquidate defaulted loans until the Administrator implements a system to compensate and reimburse certified development companies for liquidation of any defaulted loans.

(f) COMPENSATION AND REIMBURSEMENT.—

(1) REIMBURSEMENT OF EXPENSES.—The Administrator shall reimburse each certified development company for all expenses paid by such company as part of the foreclosure and liquidation activities taken to carry out this section, if the expenses—

(A) were—

(i) approved in advance by the Administrator, either specifically in a plan submitted pursuant to subsection (c) or generally, such as, but not limited to, actions approved by the Administrator in regulations or other interpretative issuances; or

(ii) incurred by the development company on an emergency basis without prior approval from the Administrator, if the Administrator determines that the expenses were reasonable and appropriate; and

(B) are submitted by the certified development company to the Administrator not later than 3 years after the date the expense was incurred or the bill therefore is submitted to the certified development company, whichever is later.

(2) ALTERNATIVE REIMBURSEMENT.—As an alternative to the procedure in paragraph (1), a certified development company may elect to obtain reimbursement for all such expenses from the proceeds of any collateral provided by the borrower that was liquidated by the certified development company if the expenses comply with the requirements of paragraph (1). Within 6 months of the reimbursement, the certified development company shall provide the Administrator with the same information and documentation it would be required to submit to obtain payment from the Administrator.

(3) REGULATIONS.—The Administrator shall promulgate regulations, after notice and comment to carry out the provisions of paragraphs (1) and (2). If the Administrator does not promulgate such regulations within one year, certified development companies shall be authorized, notwithstanding the requirements of subsection (e)(2), to liquidate defaulted loans and such costs and expenses incurred, absent clear and convincing evidence of fraud, shall be deemed to be approved.

(4) COMPENSATION FOR RESULTS.—

(A) DEVELOPMENT.—In regulations promulgated pursuant to paragraph (3), the Administrator also shall develop a schedule of compensation that provides monetary incentives for certified development companies in order to increase recoveries on defaulted loans.

(B) CRITERIA.—The schedule shall—

(i) be based on a percentage of the net amount recovered, but shall not exceed a maximum amount; and

(ii) not apply to any foreclosure which is conducted under a contract between a certified development company and a qualified third party to perform the foreclosure and liquidation.

(C) PAYMENT.—The Administrator shall transmit the compensation provided herein to the development company from the proceeds of liquidated collateral, unless the Administrator utilizes another source for funds, within 30 days from the date when the liquidation case has been closed and documentation received.

SEC. 511. REPORTS.

(a) PREMIER CERTIFIED DEVELOPMENT COMPANIES.—The Administrator shall report annually to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the implementation of section 504. Each report shall include—

(1) the number of premier certified development companies;

(2) the debenture volume of each premier certified development company;

(3) a comparison of the loss rate for premier certified development companies to the loss rate for accredited or certified development companies; and

(4) such other information as the Administrator deems appropriate.

(b) REPORTS ON LIQUIDATION AND FORECLOSURES.—

(1) IN GENERAL.—Based on information provided by certified development companies and the Administrator, the Administrator shall submit annually to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of delegation of authority under section 510.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a certified development company, or for which losses were otherwise mitigated by pursuant to a workout plan—

(i) the total cost of the project financed with the loan;

(ii) the total original dollar amount guaranteed by the Administration;

(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each certified development company to which authority is delegated under section 510, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to each certified development company that contracts with a qualified third-party contractor pursuant to section 510(e), the total of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(D) With respect to all loans subject to foreclosure, liquidation, or mitigation under section 510, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(E) A comparison between—

(i) the information provided under subparagraph (D) with respect to the 12-month period preceding the date on which the report is submitted; and

(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administrator during the same period.

(F) The number of times that the Administrator has failed to approve or reject a liquidation plan, workout plan, request to purchase indebtedness, or failed to approve a third-party contractor under section 510, including specific information regarding the reasons for the Administrator's failure and any delays that resulted.

(c) REPORTS ON COMBINATION FINANCING.—

(1) REPORTING REQUIREMENT.—Not later than 90 days after the date of enactment of the Small Business Financing and Investment Act of 2009, and annually thereafter, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that—

(A) includes the number of small business concerns that have financing under both section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) during the year before the year of that report; and

(B) describes the total amount and general performance of the financing described in subparagraph (A).

(d) REPORT ON OTHER ECONOMIC DEVELOPMENT ACTIVITY.—The Administrator shall compile and submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on an annual basis, commencing in the year that the Small Business Financing and Investment Act of 2009 is enacted, a report that describes the

economic and community development activities, other than loan making under this title, of each certified development company during the prior fiscal year. The Administrator may contract with another party, including non-governmental entities, to collect information or otherwise assist in the preparation of the report required by this subsection.

SEC. 512. PROMULGATION OF REGULATIONS UNDER THIS TITLE.

(a) DEADLINES FOR IMPLEMENTING REGULATIONS.—Except as expressly provided elsewhere in the Small Business Financing and Investment Act of 2009, the Administrator shall promulgate regulations under this title, after providing notice and the opportunity for comment, within 180 days after the date of enactment of that Act.

(b) NOTICE AND COMMENT REQUIREMENTS IN GENERAL.—Except as otherwise provided elsewhere in this title, the Administrator shall provide, after the date of enactment of the Small Business Financing and Investment Act of 2009, notice of any proposed change to a regulation implementing this title (whether in existence on the date of enactment of the Small Business Financing and Investment Act of 2009 or subsequently adopted), publish such notification in the Federal Register, and provide a comment period of not less than 60 days.

SEC. 513. PROGRAM NAME.

(a) IN GENERAL.—The program created by this title shall be referred to as the CDC Economic Development Loan Program.

(b) MODIFICATION OF MATERIALS USED.—Not later than 60 days after the date of enactment of the Small Business Financing and Investment Act of 2009, the Administrator shall modify all documents and websites to conform to the name change made by this section.

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