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FULL COMMITTEE MARKUP OF H.R. 3854: THE SMALL BUSINESS FINANCING AND INVESTMENT ACT OF 2009

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD
OCTOBER 21, 2009

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FULL COMMITTEE MARKUP OF H.R. 3854: THE SMALL BUSINESS FINANCING AND INVESTMENT ACT OF 2009

Wednesday, October 21, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360 Rayburn House Office Building, Hon. Nydia Velázquez [chairman of the Committee] presiding.

Present: Representatives Velázquez, Dahlkemper, Schrader, Kirkpatrick, Michaud, Altmire, Clarke, Ellsworth, Bright, Griffith, Halvorson, Graves, Westmoreland, Fallin, Buchanan, Luetkemeyer, Schock and Coffman.

Chairwoman VELÁZQUEZ. I am pleased to call this morning's markup to order.

Today we will consider legislation to reauthorize and enhance the SBA Access to Capital Programs. We often refer to small firms as the engine of our economy. After all, small companies create more new jobs and drive greater innovation than big businesses do.

Through the Recovery Act, Congress has delivered important funding to small firms. Since then we have seen real progress. Over the last seven months, SBA has made $12 billion in loans. But as I said back in February, the Recovery Act was a critical first step, not a silver bullet. Today access to capital remains a serious challenge for small businesses.

We need to be sure that small firms have all of the resources they need to grow and flourish because at the end of the day our recovery will hinge on job creation, the very thing that small businesses do best.

Historically, small firms have created roughly 64 percent of all new jobs, but today a lack of capital is hindering their ability to put Americans back to work. According to a July survey by the Federal Reserve, 35 percent of banks have tightened lending to small firms.

Meanwhile, 79 percent of entrepreneurs have seen their credit card lines cut dramatically. These are troubling declines not just for small businesses, but for our larger economy.

The legislation we are considering today will help reverse this trend. It improves SBA financing options and, most importantly, creates or saves 1.33 million jobs per year. With unemployment was 9.8, we could really use those 1.33 million jobs. That is why this bill is such a critical piece of legislation.

And I want to recognize Chairman Schrader for his leadership in moving it forward. I would also like to thank all of my colleagues who worked so hard to make this bill a success: Ranking Member Graves, Ms. Halvorson, Mr. Buchanan, Mr. Ellsworth, Mr. Luetkemeyer, Ms. Kirkpatrick, Ms. Dahlkemper, Mr. Nye, and Mr. Griffith.

I now yield to Ranking Member Graves for his opening remarks.

Mr. GRAVES. Good morning. Thank you, Madam Chairman, for holding this markup. I appreciate, very much appreciate, your leadership on this issue and commend you for working in a bipartisan manner on developing legislation that is going to provide changes to the Small Business Administration programs that are going to provide needed capital to small businesses.

Testimony before this Committee shows that small businesses have been unable to obtain needed capital to maintain or expand their businesses. In our districts, business owners have noted that they have seen banks reduce their credit lines and demand excessive collateral to get a loan.

The inability to obtain capital has a serious detrimental effect on the capacity of small businesses to grow their business and pull us out of this current recession.

The Committee has worked hard to produce legislation with significant discussions between Democrat and Republican members. The bill before us today is a compilation of legislative initiatives drafted by members of both sides of the aisle. Their contributions cannot be understated, and I would especially like to thank Congressman Buchanan and Congressman Luetkemeyer for their input on this legislation.

The bill before us today makes important changes to improve the efficiency and increase the transparency of the SBA's lending programs. These modifications are needed to insure that capital is made available to as many small businesses as possible in a timely manner because delay in the marketplace can result in lost opportunities for small businesses.

In addition to creating improvements for the management of the SBA Capital Access Programs, the bill's primary focus is to provide vital capital to small businesses, including those in rural areas. The bill increases outreach efforts to rural lenders in the 7(a) loan program, modifying the areas in which the new market venture capital companies can operate and will provide greater investment opportunities for rural areas that have been bypassed by other venture capitalists.

These are only two of the examples of the many improvements that this will increase access to capital by small business owners.

Despite these significant improvements, there are still some unresolved concerns with the bill. While I strongly endorse the efforts for the SBA to find lenders to make loans, I am a little troubled that the SBA could still make a loan if no bank is willing to make such a loan. To me it suggests an underlying problem possibly with the loan package, and I do not think that the SBA should be making the loan.

The disaster loan provisions included an authorization to make grants to small businesses rather than loans, and I recognize that FEMA provides grants to individuals, but not sufficient grant funds

to small businesses, and I am not sure that we should change a loan program to a grant program, especially without any detailed findings that grants would help save businesses during recovery from a disaster that were not saved by loans.

And finally, we must recognize the current fiscal constraints. The deficit is at an all time high, and Congress is considering a number of potentially expensive programs, and I am concerned about the potential overall cost of the bill.

But those are my reservations on the bill before us, and given the importance of the bills to the potential prosperity of American small business economy, I support the bill being reported out of Committee, and I look forward to working with the Chairwoman to address these concerns as the legislative process moves forward.

And again, I want to thank you for holding this markup, and I yield back the balance.

[The prepared statement of Mr. Graves is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Graves.

Are there any other members that wish to be recognized for the purpose of making opening remarks?

Ms. Halvorson.

Ms. HALVORSON. Thank you, Chairwoman Velázquez and Ranking Member Graves, for holding this morning's Committee markup.

The legislation that we are considering today will provide a much needed update to the SBA's Access to Capital Programs. All of us on this Committee have heard from small business owners in our districts that accessing capital continues to be a major challenge. So small businesses need capital to grow and create new jobs, but the credit crunch has made it exceedingly difficult for them to obtain loans. The SBA's Access to Capital Programs are supposed to be a resource for small business owners when they have trouble getting credit from traditional sources, and unfortunately, we have seen a recent decrease in the SBA's loan volume.

In Fiscal Year 2009, SBA made around 35 percent fewer 7(a) loans than it did in the previous year. This needs to be turned around, and we need action now.

The legislation we are marking up this morning, the Small Business Financing and Investment Act, will reauthorize and enhance the SBA's Access to Capital Program so that they can better serve the needs of our nation's small businesses. I commend the Chairman of the Finance and Tax Subcommittee, Mr. Schrader, for taking the lead on this legislation, and I am also pleased that it incorporates my bill, H.R. 3723, the Small Business Credit Expansion and Loan Market Stabilization Act. The language from my bill will improve the SBA's flagship 7(a) loan program. It extends the provisions in the Recovery Act that reduced borrower fees and increased the SBA loan guarantee to 90 percent.

We also raised the loan limit to $3 million, and I look forward to working with the Chair and the Committee to evaluate further raising the limit to five million, which is what I have been hearing from the Committee and outside people that we need to do.

We are also going to extend the ARC Loan Program, which was created by the ARRA to provide small business owners with interest free loans that are 100 percent guaranteed by SBA. The lan-

guage from my bill will increase the maximum award from 35,000 to 50,000.

To increase lender participation in 7(a), the bill creates new rural and small lender outreach programs at the SBA.

And finally, we are going to help veteran entrepreneurs by fully implementing the SBA's Increased Veteran Participation Loan Program.

So I think the bill we have before us today is a good step in the right direction, and I urge members of this Committee to support it.

Madam Chair, I yield back the balance of my time.

Chairwoman VELÁZQUEZ. Are there any other members who wish to be recognized?

Mr. Schrader.

Mr. SCHRADER. Thank you, Madam Chair.

I would just like to thank everybody on the Committee and everyone who has come before our Committee and the testimony they have given to help us fine tune the SBA programs before us today. I particularly enjoyed working with the Ranking Member and my colleagues on the other side of the aisle to help reduce the cost of this bill, recognizing deficit in an issue, but still trying to make sure the lending markets fee up a little bit, expand some of our opportunities around the country to get these agencies, frankly, in a better competitive position, and then the next step will be to instill confidence in the banks.

We are not adding a whole bunch of new regulations that would hamper their ability to get involved. No strings attached; these are just opportunities to get small business going again, and I really appreciate the opportunity to be part of this bill.

Thank you, Madam Chair.

Chairwoman VELÁZQUEZ. Any other member that wishes?

Mr. Ellsworth.

Mr. ELLSWORTH. Madam Chair, in the interest of time, if I could just enter a statement for the record, I would appreciate it.

Chairwoman VELÁZQUEZ. Without objection, so ordered.

Mr. ELLSWORTH. Thank you.

Chairwoman VELÁZQUEZ. Ms. Dahlkemper.

Ms. DAHLKEMPER. Madam Chair, I would also, in the interest of time, ask that I have an opening statement that I would like to enter into the record.

Chairwoman VELÁZQUEZ. Without objection, so ordered.

Mr. Griffith.

Mr. GRIFFITH. Madam Chair, I, too, would like to make an opening statement. I am late. Do we have time?

Chairwoman VELÁZQUEZ. Yes, we do.

Mr. GRIFFITH. We do? Well, thank you, Madam Chairwoman.

In rural America, small businesses often serve as a local economic anchor. Not only do they create and support jobs, but they are important contributors to local charities and nonprofit groups. In small towns, business owners are often engaged in the civic process and serve as community leaders. In short, entrepreneurs are nothing short of the glue that holds rural communities together.

For these reasons, small businesses play a critical role when communities recover from natural disasters. When tornados or hurricanes strike, many communities don't fully recover until local businesses reopen their doors. Once businesses get back to work, local commerce can resume. Citizens are able to find employment, and eventually life returns to normal.

The Small Business Administration's Disaster Loan Program is an important lifeline for businesses that are struggling after natural disasters. Low interest loans provided through this program help firms rebuild if their facilities sustain physical damage. The program can also help small businesses survive the economic shocks that accompany disasters.

Earlier this year, in April, thunderstorms and tornados ripped through north Alabama, my district. More than 100,000 homes and businesses in our state lost power. The SBA's Disaster Loan Program is helping many businesses in the region get back on their feet. Already the agency has approved more than one million in disaster assistance loans for businesses. These funds are helping small firms recover from both the physical and economic damage caused by storms.

While these programs are valuable, I am afraid they do not yet function at their highest potential. Earlier this year, the Government Accounting Office examined the SBA's Disaster Recovery Programs. Specifically, GAO looked at what SBA has done to improve these measures since Hurricane Katrina. In July, when the GAO testified before this Committee, they told us that the Small Business Administration is still unprepared to respond to a major disaster.

This gives me reason for concern. As the old saying goes, hope for the best but prepare for the worst. From what the GAO is telling us, it looks like some in the SBA may be hoping for the best.

The legislation we are considering today includes provisions I author to improve the SBA's disaster assistance initiatives. By improving how the SBA disburses assistance, the bill will speed help to all firms more quickly. The SBA also will be required to establish regional disaster working groups. This will insure the agency prepares for the most likely disaster scenarios in different parts of the country.

Madam Chair, access to capital is always important for small businesses, but when disasters strike, finding an affordable loan can mean the difference between staying in business and going under. The legislation before us will help entrepreneurs find the capital they need in good times as well as bad.

I urge the adoption of the bill and yield back the balance of my time.

Chairwoman VELÁZQUEZ. Are there any other members that wish to be recognized at this point?

[No response.]

Chairwoman VELÁZQUEZ. We will now consider H.R. 3854, The Small Business Financing and Investment Act of 2009, introduced by Representative Schrader.

[The Bill H.R. 3854 is included in the appendix.]

Chairwoman VELÁZQUEZ. This legislation is a comprehensive answer to small firms' capital needs. It carries them throughout the

entire small business life cycle, from day one of the start-up stage to the point at which they can compete with the Fortune 500. For small firms just getting off the ground, Representative Ellsworth crafted important improvements to the Microloan Program. In the past, that initiative inspired growth in otherwise struggling communities.

By reducing interest rates and providing more flexible credit terms, H.R. 3854 gives entrepreneurs greater control of their finances and empowers them to make new investments.

Meanwhile, a move to pair traditional loans with technical training programs provides small firms with the information they need to be successful. At the same time, efforts to draw more lenders into the program will expand access to this vital source of funding.

We often talk about the importance of welfare to work. Well, microloans put people to work through the power of entrepreneurship. If we are looking for policies that spur job growth, then this is the kind of program we should be supporting. Starting a new business is a resource intensive process, but entrepreneurs' capital needs do not begin and end with the first business plan. Rather, they continue throughout all phases of development. For that reason, this bill expands SBA's 504 Program delivering better financing options to middle market firms.

To further bolster established companies, H.R. 3854 also extends successful Recovery Act measures, for example, fee exemptions on loan guarantees. In doing so, it encourages greater lending from banks. This is key because many banks are concerned that they do not have the capital to resume lending in earnest until the middle of 2010. But as any entrepreneur will tell you, small businesses cannot afford to wait that long. They need capital for things like stocking their shelves and financing investments today, not eight months from today.

That is why Representative Halvorson contributed policies to streamline SBA's 7(a) program. Her contributions deliver better funding options to veteran entrepreneurs, the men and women who have served our country so well and who are now helping to drive our economy.

Meanwhile we are improving 7(a) financing options and doing so in a way that mitigates risk to the taxpayer. I want to be clear. Taxpayer protections are a top priority in this bill. It ramps up safeguards in a number of ways, including actions recommended by Representative Buchanan, which allow CDCs to liquidate defaulted loans.

While the SBA is a critical resource for small firms' capital needs, there are cases in which its traditional loans are not enough. For these instances, Congress created a portfolio of investment initiatives. Through the contributions of Representative Luetkemeyer, H.R. 3854 will enhance SBA's largest pool of equity capital, the Small Business Investment Company Program. It will do this by increasing the number and size of investments made. This increase could not come at a more critical time.

In 2009, D.C. firms will invest ten to $15 billion less than they did in 2008. That is an alarming trend, one that if not reversed will significantly hamper our recovery. By encouraging greater partici-

pation among successful SBICs, this bill can breach the gap and get equity capital flowing to small businesses.

Of all the contributions small firms make to our economy, innovation is one of the most important. That is why H.R. 3854 targets promising start-ups in fields like renewable energy. Through provisions introduced by Representative Kirkpatrick, we are steering investments to firms who focus in that area. In order to fill the void left by the now defunct participating securities program, this bill creates a new pool of capital for early stage firms. That provision introduced by Representative Nye will increase investment in the kind of high growth start-ups that create new jobs.

It is important to know, like many of the measures in this bill, the early stage capital program is governed by critical taxpayer safeguards. For example, it requires investment companies to match grant requests with capital from non-federal resources. SBA will also conduct audits of participating companies to insure that grants are invested in a transparent fashion.

Small businesses play a key role in all sectors of our economy, but they have a particularly strong track record in the tech industry. So I am pleased that this bill encourages small firms to invest in an innovative new product. By helping small medical practices afford health IT, it allows them to make yet another critical contribution to our economy, a streamlined health care system. At present only 13 percent of single doctor practices use HIT. This is because the technology is extremely costly. For your average three-doctor practice, implementation runs close to $100,000, a large sum for any small business.

By helping small practices afford HIT, H.R. 3854 will encourage greater adoption and, in turn, reduce cost and minimize errors. This measure will not only improve the quality of our health care system, but will create jobs for entrepreneurs in the health IT and technology sector. It would not have come together without the work of Representative Dahlkemper, and I am grateful for her work in including this provision.

H.R. 3854 insures small firms have the financing they need to not only make new investments, but to weather any economic storm. Importantly, it also accounts for entrepreneurs in the event of a natural disaster.

To address shortcomings in SBA disaster loan programs, Representative Griffith introduced measures to establish regional working groups. Doing so will help SBA respond to the multitude of different challenges that could impact our country.

H.R. 3854 also tailors assistance to fit the express needs of small firms following a disaster. When it comes to preparing for catastrophe, SBA's work is never done. This legislation will help the agency remain vigilant in protecting the small businesses that drive our economy. These are the businesses that given the opportunity will drive new growth for our economy and put Americans back to work.

The fact that this bill has such broad support is testament to its importance. I am pleased to say that it is backed by a wide range of groups, almost close to 20. We have the National Restaurants Association, the American Society of Travel Agents, the International Franchise Association, Biotech, National Association of

Credit Unions, the National Association of Investment Companies, the National Venture Capital Association, the American Dental Association, the American Institute of Architects, Air Conditioning Contractors of America, the Association of General Contractors of America, among other.

This bill is about better choices for small businesses. It allows entrepreneurs to select the best possible funding options for their firms and will go a long way in empowering those businesses, but perhaps most importantly, it will help create and sustain 1.33 million jobs. I cannot imagine anyone who can argue with that number.

H.R. 3854 is a bipartisan product, and I urge my colleagues to support its adoption.

Are there any other members who wish to be recognized on H.R. 3854?

[No response.]

Chairwoman VELÁZQUEZ. Well, the Committee now moves to consideration of H.R. 3854. The Clerk will report the title of the bill.

The CLERK. 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.

Chairwoman VELÁZQUEZ. I ask unanimous consent that the bill in its entirety be open for amendment at this time. Does any member seek recognition for the purpose of offering an amendment?

[No response.]

Chairwoman VELÁZQUEZ. Seeing no amendments, the question is on reporting H.R. 3854. All those in favor say aye.

[Chorus of ayes.]

Chairwoman VELÁZQUEZ. Those opposed say no.

[No response.]

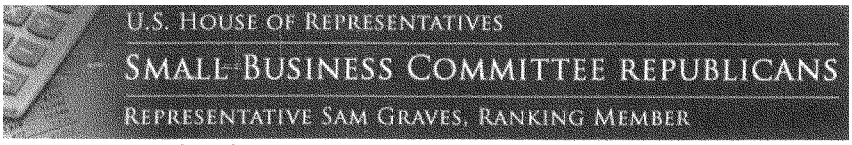
Chairwoman VELÁZQUEZ. The ayes have it. The bill is adopted and reported.

This concludes Committee business for today. I ask unanimous consent that the Committee is authorized to correct section numbers, punctuation, cross-references, and to make necessary technical and conforming corrections on the bill considered today.

Without objection, so ordered.

This markup is now adjourned.

[Whereupon, at 10:40 a.m., the Committee was adjourned.]



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Opening Statement for Markup on
The Small Business Financing and Investment Act of 2009
Sam Graves
Ranking Member
Committee on Small Business
United States House of Representatives
Washington, DC
October 21, 2009

Good morning. Thank you, Madam Chairwoman, for holding this markup. I appreciate your leadership on this issue and commend you for working in a bipartisan manner on developing legislation that will provide changes to the Small Business Administration programs that provide needed capital to small businesses. Testimony before this Committee shows that small businesses have been unable to obtain needed capital to maintain or expand their businesses. In our districts, business owners have noted that they have seen banks reduce their credit lines and demand excessive collateral to get a loan. The inability to obtain capital has a serious detrimental effect on the capacity of small businesses to grow their businesses and pull us out of the current recession.

The Committee has worked hard to produce legislation with significant discussions between Democrat and Republican members. The bill before us today is a compilation of legislative initiatives drafted by members from both sides of the aisle. Their contributions cannot be understated. I would especially like to thank Congressmen Buchanan and Luetkemeyer for their input on this legislation. The bill before us today makes important changes to improve the efficiency and increase the transparency of the SBA's lending programs. Those modifications are needed to ensure that capital is made available to as many small businesses as possible in a timely manner because delay in the marketplace can result in lost opportunities for small businesses.

In addition to creating improvements for the management of the SBA capital access programs, the bill's primary focus is to provide vital capital to small businesses, including those in rural areas. The bill increases outreach efforts for rural lenders in the 7(a) loan program. Modifying the areas in which New Market Venture Capital Companies can operate will provide greater investment opportunities for rural areas that have been bypassed by other venture capitalists. These are only two of the examples of the many improvements that will increase access to capital by small business owners. Despite these significant improvements, there are still unresolved concerns with the bill. While I strongly endorse efforts for the SBA to find lenders to make loans, I am troubled that the SBA still could make a loan if no bank is willing to make such a loan. To me that suggests an underlying problem with the loan package and I do not think that the SBA should make the loan.

The disaster loan provisions include an authorization to make grants to small businesses rather than loans. I recognize that FEMA provides grants to individuals but not sufficient grant funds to small businesses. I am not sure that we should change a loan program to a grant program especially without any detailed findings that grants would have saved businesses during recovery from a disaster that were not saved by loans. Finally, we must recognize the current fiscal constraints. The deficit is at an all time high and Congress is considering a number of other potentially expensive programs. As a result, I am concerned about the potential overall cost of the bill.

These are my reservations on the bill before us. Given, the importance of these bills to the potential prosperity of the American small business economy, I support the bill being reported out of Committee. I look forward to working with the Chairwoman to address these concerns as the legislative process moves forward. Again, I would like to thank the Chairwoman for holding this markup and yield back the balance of my time.

I

111TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2009

Mr. SCHRADER (for himself, Ms. VELÁZQUEZ, Mrs. HALVORSON, and Mrs. KIRKPATRICK of Arizona) introduced the following bill; which was referred to the Committee on Small Business

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A BILL

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.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Small Business Financing and Investment Act of 2009".

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

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LENDING ENHANCEMENTS

Sec. 101. Small lender outreach program.
Sec. 102. Rural lending outreach program.
Sec. 103. Community Express Program made permanent.
Sec. 104. Increased veteran participation program made permanent.
Sec. 105. Leasing policy.
Sec. 106. National lender training program.
Sec. 107. Applications for repurchase of loans.
Sec. 108. Alternative size standard.
Sec. 109. Pilot program authority.
Sec. 110. Loans to cooperatives.
Sec. 111. Capital backstop program.
Sec. 112. Loans to finance goodwill.
Sec. 113. Appellate process and ombudsman.
Sec. 114. Extension of recovery and relief loan benefits.
Sec. 115. Reduced documentation for business stabilization loans.
Sec. 116. Expanded eligibility for business stabilization loans.
Sec. 117. Increased amount of business stabilization loans.
Sec. 118. Extension of business stabilization loans.
Sec. 119. SBA secondary market lending authority made permanent.
Sec. 120. SBA secondary market lending authority expanded.
Sec. 121. Increased loan limits.
Sec. 122. Real estate appraisals.
Sec. 123. Additional support for Express Loan Program.
Sec. 124. Authorization of appropriations.

TITLE II—CDC ECONOMIC DEVELOPMENT LOAN PROGRAM

Subtitle A—General Provisions

Sec. 201. Program levels.
Sec. 202. Definitions.

Subtitle B—Certified Development Companies

Sec. 211. Certified development companies.
Sec. 212. Certified development company; operational requirements.
Sec. 213. Accredited lenders program.
Sec. 214. Premier certified lender program.
Sec. 215. Multi-State operations.
Sec. 216. Guaranty of debentures.
Sec. 217. Economic development through debentures.
Sec. 218. Project funding requirements.
Sec. 219. Private debenture sales and pooling of debentures.
Sec. 220. Foreclosure and liquidation of loans.
Sec. 221. Reports and regulations.
Sec. 222. Program name.

Subtitle C—Miscellaneous

Sec. 231. Report on standard operating procedures.
Sec. 232. Alternative size standard.

TITLE III—MICROLENDING EXPANSION

Sec. 301. Microloan credit building initiative.

Sec. 302. Flexible credit terms.
Sec. 303. Increased program participation.
Sec. 304. Increased limit on intermediary borrowing.
Sec. 305. Expanded borrower education assistance.
Sec. 306. Interest rates and loan size.
Sec. 307. Reporting requirement.
Sec. 308. Surplus interest rate subsidy for businesses.
Sec. 309. Authorization of appropriations.

TITLE IV—SMALL BUSINESS INVESTMENT COMPANY MODERNIZATION

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TITLE V—INVESTMENT IN SMALL MANUFACTURERS AND RENEWABLE ENERGY SMALL BUSINESSES

Subtitle A—Enhanced New Markets Venture Capital Program

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Sec. 510. Simplified formula for operational assistance grants.
Sec. 511. Authorization of appropriations and enhanced allocation for small manufacturing.

Subtitle B—Expanded Investment in Small Business Renewable Energy

Sec. 521. Expanded investment in renewable energy.
Sec. 522. Renewable Energy Capital Investment Program made permanent.
Sec. 523. Expanded eligibility for small businesses.
Sec. 524. Expanded uses for operational assistance in manufacturing and small businesses.
Sec. 525. Expansion of Renewable Energy Capital Investment Program.
Sec. 526. Simplified fee structure to expedite implementation.
Sec. 527. Increased operational assistance grants.
Sec. 528. Authorizations of appropriations.

TITLE VI—SMALL BUSINESS HEALTH INFORMATION TECHNOLOGY FINANCING PROGRAM

Sec. 601. Small business health information technology financing program.

TITLE VII—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

Sec. 701. Small business early-stage investment program.

TITLE VIII—SBA DISASTER PROGRAM REFORM

Sec. 801. Revised collateral requirements.
Sec. 802. Increased limits.
Sec. 803. Revised repayment terms.
Sec. 804. Revised disbursement process.
Sec. 805. Grant program.
Sec. 806. Regional disaster working groups.
Sec. 807. Outreach grants for loan applicant assistance.
Sec. 808. Authorization of appropriations.

TITLE IX—REGULATIONS

Sec. 901. Regulations.

TITLE I—SMALL BUSINESS LENDING ENHANCEMENTS

SEC. 101. SMALL LENDER OUTREACH PROGRAM.

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

"(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.".

1 **SEC. 102. RURAL LENDING OUTREACH PROGRAM.**

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

5 "(35) RURAL LENDING OUTREACH PROGRAM.—

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

12 "(B) MAXIMUM PARTICIPATION.—A loan
13 under the program shall include the maximum
14 participation levels by the Administrator per-
15 mitted for loans made under this subsection.

16 "(C) MAXIMUM LOAN AMOUNT.—The max-
17 imum amount of a loan under the program
18 shall be $250,000.

19 "(D) USE OF RURAL LENDERS.—The pro-
20 gram shall be carried out through lenders lo-
21 cated in a rural area (as such term is defined
22 under subsection (m)(11)(C)) or, if a small
23 business concern located in a rural area does
24 not have a lender located within 30 miles of the
25 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.".

SEC. 103. COMMUNITY EXPRESS PROGRAM MADE PERMANENT.

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

"(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.".

SEC. 104. INCREASED VETERAN PARTICIPATION PROGRAM MADE PERMANENT.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act, is further amended—

1 (1) by redesignating the second paragraph (32),
2 as added by section 208 of the Military Reservist
3 and Veteran Small Business Reauthorization and
4 Opportunity Act of 2008 (Public Law 110–186; 122
5 Stat. 631), as paragraph (33); and
6 (2) in paragraph (33), as so redesignated by
7 paragraph (1) of this section—
8 (A) by striking "pilot program" each place
9 it appears and inserting "program";
10 (B) by striking subparagraphs (C) and
11 (F); and
12 (C) by redesignating subparagraphs (D)
13 and (E) as subparagraphs (C) and (D), respec-
14 tively.

15 **SEC. 105. LEASING POLICY.**

16 Section 7(a) of the Small Business Act (15 U.S.C.
17 636(a)), as amended by this Act, is further amended by
18 striking paragraph (28) and inserting the following:
19 "(28) LEASING.—If a loan under this sub-
20 section is used to acquire or construct a facility, the
21 assisted small business concern—
22 "(A) shall permanently occupy and use not
23 less than 50 percent of the space in such facil-
24 ity; and

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

SEC. 106. NATIONAL LENDER TRAINING PROGRAM.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act, is further amended by adding at the end the following:

"(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.".

1 (b) PARTICIPATION.—An entity may not be permitted
2 to participate in any program under the Small Business
3 Act (15 U.S.C. 631 et seq.) or the Small Business Invest-
4 ment Act of 1958 (15 U.S.C. 661 et seq.) that is amended
5 under this Act, as a lending or investment entity or as
6 an agent of the Small Business Administration, unless
7 such entity satisfies the following:
8 (1) The entity has as the primary mission of
9 the entity the financing or development of small
10 business concerns.
11 (2) The entity has a full-time staff dedicated to
12 loan making activities, investment activities, or en-
13 trepreneurial development training.
14 (3) The entity does not significantly participate
15 in activities unrelated to the primary mission of the
16 entity.

17 **SEC. 107. APPLICATIONS FOR REPURCHASE OF LOANS.**

18 Section 7(a) of the Small Business Act (15 U.S.C.
19 636(a)), as amended by this Act, is further amended by
20 adding at the end the following:
21 "(38) APPLICATIONS FOR REPURCHASE OF
22 LOANS.—
23 "(A) IN GENERAL.—Not later than 45
24 days after the date of the receipt of a claim
25 from a lender for proper payment of the guar-

1 anteed portion of a loan under this subsection
2 due to default, the Administrator shall make a
3 final determination with respect to the approval
4 or denial of such claim.
5 "(B) LATE DETERMINATIONS.—If the Ad-
6 ministrator does not make a final determination
7 under subparagraph (A) in the time period
8 specified in such subparagraph, the claim shall
9 be approved and paid promptly.".

10 **SEC. 108. ALTERNATIVE SIZE STANDARD.**

11 (a) IN GENERAL.—Section 3(a) of the Small Busi-
12 ness Act (15 U.S.C. 632(a)) is amended by adding at the
13 end the following:
14 "(5) In addition to any other size standard
15 under this subsection, the Administrator shall estab-
16 lish and permit a lender making a loan under section
17 7(a) to use an alternative size standard. The alter-
18 native size standard shall be based on factors includ-
19 ing the maximum tangible net worth and average
20 net income of a business concern.".

21 (b) APPLICABILITY.—Until the Administrator estab-
22 lishes under section 3(a)(5) of the Small Business Act,
23 as added by subsection (a) of this section, an alternative
24 size standard for use by a lender making a loan under
25 section 7(a) of such Act, the alternative size standard in

1 section 121.301(b) of title 13, Code of Federal Regula-
2 tions, shall apply in such a case.

3 **SEC. 109. PILOT PROGRAM AUTHORITY.**

4 Section 7(a) of the Small Business Act (15 U.S.C.
5 636(a)), as amended by this Act, is further amended by
6 striking paragraph (25) and inserting the following:

7 "(25) LIMITATION ON CONDUCTING PILOT
8 PROJECTS.—

9 "(A) LIMITATION ON NUMBER.—Not more
10 than 10 percent of the total number of loans
11 guaranteed in any fiscal year under this sub-
12 section may be awarded as part of a pilot pro-
13 gram.

14 "(B) DOLLAR LIMITATIONS.—

15 "(i) IN GENERAL.—With respect to
16 any pilot program under this subsection es-
17 tablished on or after the date of the enact-
18 ment of the Small Business Financing and
19 Investment Act of 2009, no loan shall be
20 made under such program if such loan
21 would result in the total amount of loans
22 made during a fiscal year under all such
23 programs to be in excess of 5 percent of
24 the total amount of loans guaranteed in
25 such fiscal year under this subsection.

1 "(ii) CERTAIN PRE-EXISTING PRO-
2 GRAMS.—With respect to any pilot pro-
3 gram under this subsection established be-
4 fore the date of the enactment of the Small
5 Business Financing and Investment Act of
6 2009, no loan shall be made under such
7 program if such loan would result in the
8 total amount of loans made during a fiscal
9 year under all such programs to be in ex-
10 cess of 10 percent of the total amount of
11 loans guaranteed in such fiscal year under
12 this subsection.
13 "(C) EXPIRATION.—
14 "(i) IN GENERAL.—Except as pro-
15 vided in clause (iii), the duration of any
16 pilot program under this subsection may
17 not exceed 3 years.
18 "(ii) DESIGNATION AS NEW PRO-
19 GRAM.—For purposes of this subpara-
20 graph, a pilot program shall not be treated
21 as a new pilot program solely on the basis
22 of a modification or change in the pilot
23 program, including the change of its name.
24 "(iii) EXISTING PROGRAMS.—With re-
25 spect to any pilot program in existence on

1 the date of the enactment of the Small
2 Business Financing and Investment Act of
3 2009, such program may continue in effect
4 for a period not exceeding 3 years after
5 such date without regard to the duration
6 of such program before such date.
7 "(D) REGULATIONS.—
8 "(i) IN GENERAL.—With respect to
9 each pilot program under this subsection,
10 including each pilot program in existence
11 on the date of the enactment of the Small
12 Business Financing and Investment Act of
13 2009, the Administrator shall—
14 "(I) issue regulations for such
15 program after providing notice in the
16 Federal Register and an opportunity
17 for comment; and
18 "(II) ensure that such regula-
19 tions are published in the Code of
20 Federal Regulations.
21 "(ii) PILOT PROGRAMS ESTABLISHED
22 AFTER DATE OF ENACTMENT.—With re-
23 spect to any pilot program established
24 after the date of the enactment of the
25 Small Business Financing and Investment

1 Act of 2009, such program shall not take
2 effect until the requirements under this
3 subparagraph are satisfied.
4 "(E) REPEAL OF AUTHORITY TO WAIVE
5 CERTAIN RULES.—
6 "(i) IN GENERAL.—Notwithstanding
7 section 120.3 of title 13, Code of Federal
8 Regulations, the Administrator may not
9 from time to time suspend, modify, or
10 waive rules for a limited period of time to
11 test new programs or ideas with respect to
12 this subsection, unless such suspension,
13 modification, or waiver is explicitly author-
14 ized by Act of Congress.
15 "(ii) EXISTING PILOT PROGRAMS.—
16 Nothing under clause (i) may be construed
17 to affect a pilot program in existence on
18 the date of the enactment of the Small
19 Business Financing and Investment Act of
20 2009.
21 "(F) PILOT PROGRAM.—For purposes of
22 this paragraph, the term 'pilot program' means
23 any lending program initiative, project, innova-
24 tion, or other activity not specifically authorized
25 by Act of Congress.".

1 **SEC. 110. LOANS TO COOPERATIVES.**

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

5 "(39) COOPERATIVES.—The Administration
6 may provide loans under this subsection to any coop-
7 erative that—

8 "(A) is not organized as a tax-exempt enti-
9 ty;

10 "(B) is engaged in a legal business activ-
11 ity;

12 "(C) obtains financial benefits for the co-
13 operative and for the members of such coopera-
14 tive; and

15 "(D) is eligible under applicable size stand-
16 ards of the Administration, including that any
17 business entity that is a member of such coop-
18 erative is eligible under applicable size stand-
19 ards of the Administration.".

20 **SEC. 111. CAPITAL BACKSTOP PROGRAM.**

21 Section 7(a) of the Small Business Act (15 U.S.C.
22 636(a)), as amended by this Act, is further amended by
23 adding at the end the following:

24 "(40) CAPITAL BACKSTOP PROGRAM.—

25 "(A) IN GENERAL.—The Administrator
26 shall establish a process under which a small

1 business concern may submit an application to
2 the Administrator for the purpose of securing a
3 loan under this subsection. With respect to such
4 application, the Administrator shall collect all
5 information necessary to determine the credit-
6 worthiness and repayment ability of an appli-
7 cant and shall determine if such application
8 meets basic eligibility and credit standards for
9 a loan under this subsection.

10 "(B) PARTICIPATION OF LENDERS.—

11 "(i) IN GENERAL.—The Administrator
12 shall establish a process under which the
13 Administrator makes available to lenders
14 each loan application submitted and deter-
15 mined to meet basic eligibility and credit
16 standards under subparagraph (A) for the
17 purpose of such lenders originating, under-
18 writing, closing, and servicing the loan for
19 which the applicant applied.

20 "(ii) ELIGIBILITY.—Lenders are eligi-
21 ble to receive a loan application described
22 in clause (i) if they participate in the pro-
23 grams established under this subsection.

24 "(iii) LOCAL LENDERS.—The Admin-
25 istrator shall first make available a loan

1 application described in clause (i) to lend-
2 ers within 100 miles of the principal office
3 of the loan applicant.
4 "(iv) PREFERRED LENDERS.—If a
5 lender described in clause (iii) does not
6 agree to originate, underwrite, close, and
7 service the loan applied for within 5 busi-
8 ness days of receiving a loan application
9 described in clause (i), the Administrator
10 shall subsequently make available such
11 loan application to lenders in the Preferred
12 Lenders Program under paragraph
13 (2)(C)(ii) of this subsection.
14 "(v) AUTHORITY OF ADMINISTRATION
15 TO LEND.—If a lender described in clauses
16 (iii) or (iv) does not agree to originate, un-
17 derwrite, close, and service the loan applied
18 for within 10 business days of receiving a
19 loan application described in clause (i), the
20 Administrator shall originate, underwrite,
21 close, and service such loan.
22 "(C) ASSET SALES.—The Administrator
23 shall offer to sell loans made by the Adminis-
24 trator under this paragraph. Such sales shall be
25 made through the semi-annual public solicita-

1 tion (in the Federal Register and in other
2 media) of offers to purchase. The Administrator
3 may contract with vendors for due diligence,
4 asset valuation, and other services related to
5 such sales. The Administrator may not sell any
6 loan under this subparagraph for less than 90
7 percent of the net present value of the loan, as
8 determined and certified by a qualified third
9 party.
10 "(D) LOANS NOT SOLD.—The Adminis-
11 trator shall maintain and service loans made by
12 the Administrator under this paragraph that
13 are not sold through the asset sales under this
14 paragraph.
15 "(E) EFFECTIVE DATES.—This paragraph
16 shall have effect on a date if—
17 "(i) such date occurs during a period
18 that—
19 "(I) begins on the date the Bu-
20 reau of Economic Analysis, or any
21 successor organization, makes a deter-
22 mination that the gross domestic
23 product of the United States has de-
24 creased for three consecutive quarters;
25 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

1 this paragraph from the Federal Credit Reform
2 Act of 1990 (2 U.S.C. 661 et seq.).
3 "(II) AUTHORIZATION OF APPROPRIA-
4 TIONS.—
5 "(i) PROGRAM LEVELS.—The Admin-
6 istrator is authorized to make loans under
7 this paragraph in an amount that is equal
8 to half the amount authorized for loans
9 under this subsection other than loans
10 under this paragraph.
11 "(ii) AUTHORIZATION OF APPROPRIA-
12 TIONS.—In addition to amounts made
13 available to carry out this subsection, there
14 are authorized to be appropriated such
15 sums as may be necessary to carry out this
16 paragraph.".

17 **SEC. 112. LOANS TO FINANCE GOODWILL.**

18 Section 7(a) of the Small Business Act (15 U.S.C.
19 636(a)), as amended by this Act, is further amended by
20 adding at the end the following:
21 "(41) GOODWILL.—The Administrator may not
22 apply an application, processing, or approval stand-
23 ard to a loan for the purpose of financing goodwill
24 under this subsection, unless such standard applies
25 to all loans under this subsection.".

1 **SEC. 113. APPELLATE PROCESS AND OMBUDSMAN.**

2 The Small Business Act (15 U.S.C. 631 et seq.) is
3 amended—

4 (1) by redesignating section 44 as section 45;
5 and

6 (2) by inserting after section 43 the following:

7 **"SEC. 44. APPELLATE PROCESS AND OMBUDSMAN.**

8 "(a) APPELLATE PROCESS.—

9 "(1) IN GENERAL.—Not later than 270 days
10 after the date of the enactment of the Small Busi-
11 ness Financing and Investment Act of 2009, the Ad-
12 ministrator shall establish an independent appellate
13 process within the Administration. The process shall
14 be available to review material determinations made
15 by the Administration that affect a lender or invest-
16 ment company that participates or is applying to
17 participate in a program administered by the Ad-
18 ministration.

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

22 "(A) any appeal of a material determina-
23 tion by the Administration is heard and result-
24 ing recommendations are provided expedi-
25 tiously; and

1 "(B) appropriate safeguards exist for pro-
2 tecting the appellant from retaliation by Admin-
3 istration employees.
4 "(3) COMMENT PERIOD.—Not later than 180
5 days after the date of the enactment of the Small
6 Business Financing and Investment Act of 2009, the
7 Administrator shall provide an opportunity for no-
8 tice and comment on proposed guidelines for the es-
9 tablishment of an independent appellate process
10 under this section.
11 "(b) AGENCY OMBUDSMAN.—
12 "(1) ESTABLISHMENT.—Not later than 180
13 days after the date of the enactment of the Small
14 Business Financing and Investment Act of 2009, the
15 Administrator shall appoint an ombudsman.
16 "(2) DUTIES.—The ombudsman appointed in
17 accordance with paragraph (1) shall—
18 "(A) act as a liaison between the Adminis-
19 tration and any lender or investment company
20 that participates or is applying to participate in
21 a program administered by the Administration
22 with respect to a problem such entity may have
23 in dealing with the Administration resulting
24 from a material determination made by the Ad-
25 ministration; and

1 "(B) ensure that safeguards exist to en-
2 courage complainants to come forward and pre-
3 serve confidentiality.
4 "(c) OTHER AUTHORITY.—An individual carrying
5 out the independent appellate process established under
6 subsection (a) or the position of ombudsman established
7 under subsection (b) is authorized to—
8 "(1) examine records and documents relating to
9 a matter under review pursuant to such subsections;
10 and
11 "(2) initiate the review of a matter under such
12 subsections if such individual believes that Adminis-
13 tration procedures have not been followed as in-
14 tended with respect to such matter, without regard
15 to whether an appeal or complaint has been made.
16 "(d) LIMITATIONS.—
17 "(1) IN GENERAL.—An individual carrying out
18 the independent appellate process established under
19 subsection (a) or the position of ombudsman estab-
20 lished under subsection (b) may not, as a result of
21 the authority provided under this section—
22 "(A) make, change, or set aside a law, pol-
23 icy, or administrative decision;
24 "(B) make binding decisions or determine
25 rights;

1 "(C) directly compel an entity to imple-
2 ment the recommendations of such individual;
3 or
4 "(D) accept jurisdiction over an issue that
5 is pending in a legal forum.
6 "(2) RULE OF CONSTRUCTION.—Activities car-
7 ried out under this section may not be construed—
8 "(A) as a formal investigation, formal
9 hearing, or binding decision;
10 "(B) as limiting any remedy or right of ap-
11 peal;
12 "(C) as affecting any procedure concerning
13 grievances, appeals, or administrative matters
14 under law; or
15 "(D) as a substitute for an administrative
16 or judicial proceeding.
17 "(e) REPORT.—Not later than one year after the date
18 of the enactment of the Small Business Financing and In-
19 vestment Act of 2009 and annually thereafter, the Admin-
20 istrator shall submit to the Committee on Small Business
21 of the House of Representatives and the Committee on
22 Small Business and Entrepreneurship of the Senate a re-
23 port describing and providing the status of appeals made
24 under subsection (a) and complaints made under sub-
25 section (b).

1 "(f) DEFINITIONS.—In this section, the following
2 apply:
3 "(1) MATERIAL DETERMINATION.—The term
4 'material determination' includes determinations re-
5 lating to—
6 "(A) applications for payment relating to a
7 loan guarantee; and
8 "(B) the ability of an entity to participate
9 in an Administration loan or investing program.
10 "(2) INDEPENDENT APPELLATE PROCESS.—
11 The term 'independent appellate process' means a
12 review by an Administration official who does not di-
13 rectly or indirectly report to the Administration offi-
14 cial who made the material determination under re-
15 view.".

16 **SEC. 114. EXTENSION OF RECOVERY AND RELIEF LOAN**
17 **BENEFITS.**

18 (a) FEE REDUCTIONS.—Section 501 of title V of di-
19 vision A of the American Recovery and Reinvestment Act
20 of 2009 (Public Law 111–5) is amended—
21 (1) in subsection (a) by striking "September
22 30, 2010" and inserting "September 30, 2011"; and
23 (2) in subsection (c) by striking paragraph (2).
24 (b) ECONOMIC STIMULUS LENDING PROGRAM FOR
25 SMALL BUSINESSES.—Section 502(f) of title V of division

1 A of the American Recovery and Reinvestment Act of
2 2009 (Public Law 111–5) is amended by striking "the
3 date 12 months after the date of enactment of this Act"
4 and inserting "September 30, 2011".

5 **SEC. 115. REDUCED DOCUMENTATION FOR BUSINESS STA-**
6 **BILIZATION LOANS.**

7 Section 506(a) of title V of division A of the Amer-
8 ican Recovery and Reinvestment Act of 2009 (Public Law
9 111–5) is amended by adding at the end the following:
10 "In carrying out such program, the Administrator shall
11 establish and utilize a one-page application for loans under
12 this section and shall authorize lenders to utilize the same
13 documentation and procedural requirements for loans
14 under this section as such lenders utilize for other loans
15 of a similar size and type.".

16 **SEC. 116. EXPANDED ELIGIBILITY FOR BUSINESS STA-**
17 **BILIZATION LOANS.**

18 Section 506(c) of title V of division A of the American
19 Recovery and Reinvestment Act of 2009 (Public Law 111–
20 5) is amended by striking "but shall not include" and all
21 that follows through "enactment of this Act".

22 **SEC. 117. INCREASED AMOUNT OF BUSINESS STABILIZA-**
23 **TION LOANS.**

24 Section 506(d) of title V of division A of the Amer-
25 ican Recovery and Reinvestment Act of 2009 (Public Law

111–5) is amended by striking "$35,000" and inserting "$50,000".

SEC. 118. EXTENSION OF BUSINESS STABILIZATION LOANS.

Section 506(j) of title V of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) is amended by striking "September 30, 2010" and inserting "September 30, 2011".

SEC. 119. SBA SECONDARY MARKET LENDING AUTHORITY MADE PERMANENT.

Section 509 of title V of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f), (h), and (i) as subsections (e), (f), and (g), respectively.

SEC. 120. SBA SECONDARY MARKET LENDING AUTHORITY EXPANDED.

Section 509 of title V of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), as amended by this Act, is further amended—

(1) in subsection (c)(1) by adding at the end the following: "Such process shall include the designation of each lender participating in a program under section 7(a) of the Small Business Act as a

1 Systematically Important Secondary Market Broker-
2 Dealer for purposes of this section."; and
3 (2) in subsection (e), as so redesignated by sec-
4 tion 20 of this Act, by adding at the end the fol-
5 lowing: "To the extent that the cost of an elimi-
6 nation or reduction of fees is offset by appropria-
7 tions, the Administrator shall in lieu of the fee oth-
8 erwise applicable under this subsection collect no fee
9 or reduce fees to the maximum extent possible.".

10 **SEC. 121. INCREASED LOAN LIMITS.**

11 Section 7(a) of the Small Business Act (15 U.S.C.
12 636(a)), as amended by this Act, is further amended—
13 (1) in paragraph (2)(A)—
14 (A) in clause (i)—
15 (i) by inserting after "$150,000" the
16 following: "and is less than or equal to
17 $2,000,000"; and
18 (ii) by striking "or" at the end;
19 (B) in clause (ii) by striking the period at
20 the end and inserting "; or"; and
21 (C) by adding at the end the following:
22 "(iii) 50 percent of the balance of the
23 financing outstanding at the time of dis-
24 bursement of the loan, if such balance ex-
25 ceeds $2,000,000."; and

(2) in paragraph (3)(A) by striking "$2,000,000" and inserting "$3,000,000".

SEC. 122. REAL ESTATE APPRAISALS.

Section 7(a)(29) of the Small Business Act (15 U.S.C. 636(a)(29)) is amended—

(1) in the matter preceding subparagraph (A) by striking "a State licensed or certified appraiser" and inserting "an appraiser licensed or certified by the State in which such property is located";

(2) in subparagraph (A) by striking "$250,000" and inserting "$400,000"; and

(3) in subparagraph (B) by striking "$250,000" and inserting "$400,000".

SEC. 123. ADDITIONAL SUPPORT FOR EXPRESS LOAN PROGRAM.

Section 7(a)(18)(B) of the Small Business Act (15 U.S.C. 636(a)(18)(B)) is amended by adding after "under subparagraph (A)(i)" the following: ", except that a lender making a loan under paragraph (31) may not retain any percentage of a fee collected under such subparagraph".

SEC. 124. AUTHORIZATION OF APPROPRIATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by inserting after subsection (e) the following:

"(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).".

TITLE II—CDC ECONOMIC DEVELOPMENT LOAN PROGRAM

Subtitle A—General Provisions

SEC. 201. PROGRAM LEVELS.

Section 20 of the Small Business Act (15 U.S.C. 631 note), as amended by this Act, is further amended by inserting after subsection (f) the following:

"(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.".

SEC. 202. DEFINITIONS.

Section 103 of the Small Business Investment Act of 1958 (5 U.S.C. 662) is amended as follows:

(1) By amending paragraph (6) to read as follows:

"(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;".

(2) By striking "and" at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting a semicolon, and by adding at the end the following new paragraphs:

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

1 "(21) the term 'local governmental entity'
2 means—
3 "(A) a State or a political subdivision of a
4 State; or
5 "(B) a combination of political subdivisions
6 which—
7 "(i) has been formed to promote eco-
8 nomic or community development;
9 "(ii) is composed of representatives of
10 the State or a political subdivision acting
11 in their official capacity; and
12 "(iii) includes an area in an adjacent
13 State if it is part of a local economic area,
14 a rural area, or has a population deter-
15 mined by the Administrator to be insuffi-
16 cient to support the formation of a sepa-
17 rate development company;
18 such term includes entities meeting the require-
19 ments of clauses (i) through (iii), such as, but
20 not limited to, a council of governments, re-
21 gional development corporation, regional plan-
22 ning commission, or economic development dis-
23 trict;
24 "(22) the term 'member' means any person au-
25 thorized to vote for a director of a corporation or the

1 dissolution or merger of a company (for purposes of
2 this definition, a shareholder of a for-profit corpora-
3 tion shall be considered a member);
4 "(23) the terms 'rural' and 'rural area' shall
5 have the same meaning as those terms are given in
6 section 1991(a)(13)(A) of title 7, United States
7 Code; and
8 "(24) the term 'small manufacturer' means a
9 small business concern—
10 "(A) the primary business of which is clas-
11 sified in sector 31, 32, or 33 of the North
12 American Industrial Classification System; and
13 "(B) all of the production facilities of
14 which are located in the United States.".

15 **Subtitle B—Certified Development**
16 **Companies**

17 **SEC. 211. CERTIFIED DEVELOPMENT COMPANIES.**

18 Section 501 of the Small Business Investment Act
19 of 1958 (15 U.S.C. 695) is amended to read as follows:

20 **"SEC. 501. CERTIFIED DEVELOPMENT COMPANIES.**

21 "(a) CERTIFIED DEVELOPMENT COMPANY DEBEN-
22 TURE AUTHORITY.—Only development companies cer-
23 tified by the Administrator shall have the authority to
24 issue debentures under this Act.

1 "(b) CERTIFICATION STANDARDS.—A development
2 company shall be certified for the purposes of issuing de-
3 bentures if the Administrator determines that it meets
4 each of the following criteria:
5 "(1) SMALL CONCERN.—
6 "(A) IN GENERAL.—Except as provided in
7 subparagraph (C) of paragraph (2), the com-
8 pany, including its affiliates, shall have no more
9 than 200 employees.
10 "(B) CONTROL.—Except as provided in
11 paragraph (2) (B) or (C) the company shall not
12 be under the control of any other concern.
13 "(C) NOT FOR PROFIT.—The development
14 company is organized as a not-for-profit cor-
15 poration.
16 "(2) EXCEPTIONS.—
17 "(A) FOR PROFIT STATUS.—If a develop-
18 ment company was chartered as a for-profit
19 corporation and issued debentures prior to Jan-
20 uary 1, 1987, the company shall not be re-
21 quired to change its status to not-for-profit in
22 order to be certified.
23 "(B) AFFILIATION GRANDFATHER.—Any
24 company that was authorized by the Adminis-
25 trator to issue debentures before December 31,

1 2005, shall be eligible for certification without
2 regard to its status as part of, or its affiliation
3 with, any other not-for-profit corporation or
4 local governmental entity unless that not-for-
5 profit corporation or local governmental entity
6 is another entity that issues debentures under
7 this title.

8 "(C) AFFILIATION WITH LOCAL GOVERN-
9 MENTAL ENTITIES.—Any company that was or-
10 ganized after the date of enactment of the
11 Small Business Financing and Investment Act
12 of 2009 shall be eligible for certification without
13 regard to its status as part of or affiliation with
14 any local governmental entity.

15 "(3) GOOD STANDING.—A development com-
16 pany shall be in good standing and comply with all
17 laws, in every State in which it is incorporated or
18 authorized to conduct business.

19 "(4) MEMBERSHIP.—

20 "(A) IN GENERAL.—The development com-
21 pany shall have at least 25 members.

22 "(B) VOTING RIGHTS.—No member shall
23 control more than 10 percent of the total voting
24 power in the development company.

1 "(C) RESIDENCE.—Members must be resi-
2 dents of the State in which the development
3 company is chartered or authorized to do busi-
4 ness.
5 "(D) DIVERSITY.—The development com-
6 pany must have at least one member from each
7 of the following:
8 "(i) A local governmental entity.
9 "(ii) A financial institution subject to
10 regulation by a Federal organization be-
11 longing to the Federal Financial Institu-
12 tions Examination Council and that pro-
13 vides long-term fixed asset financing in the
14 commercial market.
15 "(iii) A not-for-profit organization,
16 other than a development company, that is
17 dedicated to promoting economic growth.
18 "(iv) A for-profit business, other than
19 a financial institution described in clause
20 (ii).
21 "(E) EMPLOYMENT STATUS.—Membership
22 in a development company shall not be predi-
23 cated on employment status and an individual
24 who retired from or was terminated (for rea-
25 sons other than fraud or the commission of a

1 crime) from an entity described in subpara-
2 graph (D) shall be deemed to be from the orga-
3 nization described in that subparagraph.
4 "(5) BOARD OF DIRECTORS.—
5 "(A) IN GENERAL.—The development com-
6 pany's board consists of members and each di-
7 rector receives a majority vote of the members
8 unless the development company is a for-profit
9 corporation in which case the board need not
10 consist entirely of members.
11 "(B) BOARD REPRESENTATION.—There
12 shall be at least one director from not fewer
13 than 3 of the 4 types of organizations specified
14 in paragraph (4)(D) but no single type of orga-
15 nization shall have more than 50 percent rep-
16 resentation on the board of the development
17 company. If the development company is a for-
18 profit corporation, financial institution rep-
19 resentatives may make up more than 50 per-
20 cent of the board.
21 "(C) AFFILIATED ENTITY REPRESENTA-
22 TION RESTRICTIONS.—A development company
23 that is described in paragraph (1)(C) may have
24 any or all of its board members appointed by
25 entities affiliated with the company and may in-

1 clude common members who also serve on the
2 affiliate's board of directors if the appointment
3 of board members was exercised by an affiliate
4 prior to December 31, 2005.

5 "(D) SPECIAL RULE FOR CERTAIN DEVEL-
6 OPMENT COMPANIES.—The board of directors
7 for any development company issuing deben-
8 tures before December 31, 2005, and incor-
9 porated under a State law requiring, or which
10 is interpreted by the State's legal department
11 as imposing specific requirements on, the num-
12 ber and selection of members, board members,
13 or both, and the rights and privileges conferred
14 by such State law, may adhere to such provi-
15 sions.

16 "(6) PROFESSIONAL MANAGEMENT AND
17 STAFF.—

18 "(A) IN GENERAL.—The development com-
19 pany shall have full-time independent profes-
20 sional management, including a chief executive
21 officer to manage the daily operations and a
22 full-time professional staff qualified to carry out
23 the functions authorized under this title.

24 "(B) UTILIZATION OF STAFF FROM AF-
25 FILIATED ENTITIES.—A development company

1 shall not be denied certification under this sec-
2 tion if its chief executive or full-time profes-
3 sional staff is from an affiliated entity as de-
4 scribed in paragraph (1)(C).

5 "(C) STAFF UNDER CONTRACT.—The Ad-
6 ministrator shall not deny certification to a de-
7 velopment company that contracts for its full
8 time staff if one of the following conditions is
9 met:

10 "(i) The development company is lo-
11 cated in a rural area, obtains its staff
12 through contract from another develop-
13 ment company that is certified by the Ad-
14 ministrator and that development company
15 operates in the same or a contiguous
16 State.

17 "(ii) The development company had
18 issued debentures under this title prior to
19 December 31, 2005, and had contracted
20 with a for-profit business concern to pro-
21 vide staffing and management services.

22 "(c) APPLICATIONS.—

23 "(1) DEVELOPMENT COMPANIES ISSUING DE-
24 BENTURES BEFORE SEPTEMBER 30, 2009.—

1 "(A) SHORT FORM APPLICATION.—(i) For
2 any development company that issued deben-
3 tures pursuant to this title before September
4 30, 2009, the Administrator shall develop, after
5 an opportunity for notice and comment, no
6 later than 90 days after the date of enactment
7 of the Small Business Financing and Invest-
8 ment Act of 2009, a short-form application that
9 contains sufficient information for the Adminis-
10 trator to determine that the development com-
11 pany currently meets the standards set forth in
12 subsection (b). In developing such application,
13 the Administrator shall be required to limit the
14 amount of paperwork necessary to determine
15 whether the development company meets the
16 standards for certification and may limit the
17 application to the filing of reports previously
18 submitted to the Administrator.
19 "(ii) For those companies that obtain staff
20 through contracts, the application shall include
21 a copy of the contract.
22 "(B) CERTIFICATION DECISION.—(i) The
23 Administrator shall certify the development
24 company if the application demonstrates that
25 the applicant meets the standards in subsection

1 (b). The decision to certify or not approve the
2 request for certification shall be made within 7
3 business days from the date the initial submis-
4 sion of the application is received by the Ad-
5 ministrator. If the Administrator takes no ac-
6 tion to approve or disapprove within 7 business
7 days, the application for certification is deemed
8 approved and no further action is required by
9 the Administrator or the development company
10 to obtain certification. If the Administrator dis-
11 approves the application, the Administrator
12 shall provide in writing within 3 business days
13 the reasons for the disapproval. If such docu-
14 ment is not provided within the time specified,
15 the application is deemed approved and no fur-
16 ther action is required by the Administrator or
17 the development company to obtain certifi-
18 cation.
19 "(ii) For those development companies
20 that submit contracts under subparagraph
21 (A)(ii), the Administrator is limited in rejecting
22 the application only if the Administrator finds
23 that the entity servicing the applicant is no
24 longer able to provide the employees or services

1 needed by the applicant to perform the func-
2 tions that would be authorized under this title.
3 "(C) APPLICATION RESUBMITTAL.—If the
4 Administrator disapproves the application for
5 certification and provides a written statement
6 as set forth in subparagraph (B), the develop-
7 ment company may file a new application lim-
8 ited solely to addressing the concerns of the Ad-
9 ministrator and the certification procedures set
10 forth in subparagraph (B) shall recommence.
11 "(D) APPEALS.—If the Administrator dis-
12 approves an application in accordance with the
13 procedures of subparagraphs (B) or (C), the
14 applicant may, within 10 calendar days after
15 receipt of the disapproval, appeal such dis-
16 approval. The Administrator shall conduct a
17 hearing to determine such appeal pursuant to
18 sections 554, 556, and 557 of title 5, United
19 States Code, and shall issue a decision not later
20 than 45 days after the appeal is filed. The deci-
21 sion on appeal shall constitute final agency ac-
22 tion for purposes of chapter 7 of title 5, United
23 States Code.
24 "(E) GRANDFATHERING.—

1 "(i) IN GENERAL.—For the period 2
2 years after date of enactment of the Small
3 Business Financing and Investment Act of
4 2009, any development company that was
5 issuing debentures on or before the date
6 set forth in this clause (i) shall be deemed
7 to be a certified development company.
8 "(ii) COMPLETION OF APPLICATION
9 PROCESS.—The procedures set forth in
10 this paragraph for determining certifi-
11 cation shall apply to any development com-
12 pany meeting the qualifications of clause
13 (i).
14 "(iii) EFFECT OF DENIAL.—The de-
15 nial or rejection of an application for cer-
16 tification as set forth in this subsection
17 shall have no effect on the ability of a de-
18 velopment company meeting the qualifica-
19 tions in clause (i) from continuing to issue
20 debentures during the entire two-year pe-
21 riod established in that clause.
22 "(iv) FAILURE TO OBTAIN CERTIFI-
23 CATION.—Any development company that
24 fails to obtain certification in accordance
25 with the procedures set forth in this para-

1 graph during the period set forth in clause
2 (i) shall be considered to be a new develop-
3 ment company and the procedures of para-
4 graph (2) shall apply. The authority to
5 issue debentures shall cease for any devel-
6 opment company covered by this subpara-
7 graph that has failed to obtain certification
8 from the Administrator during the time
9 period set forth in clause (i).
10 "(F) AUTOMATIC QUALIFICATION PROVI-
11 SION.—If the Administrator fails to implement
12 the certification process set forth in this para-
13 graph, any development company that was
14 issuing debentures before September 30, 2009,
15 pursuant to this title shall be considered cer-
16 tified until such time as the Administrator de-
17 velops the certification procedures set forth in
18 this paragraph.
19 "(G) SAVINGS CLAUSE.—Any action taken
20 by a development company or the Administrator
21 pursuant to this paragraph shall have no im-
22 pact on any guarantee of a debenture issued
23 prior to the date of enactment of the Small
24 Business Financing and Investment Act of
25 2009.

1 "(2) APPLICATION PROCESS FOR NEW DEVEL-
2 OPMENT COMPANIES.—
3 "(A) IN GENERAL.—For any development
4 company that has not issued debentures prior
5 to September 30, 2009, the Administrator shall
6 develop no later than 180 days after the date
7 of enactment of the Small Business Financing
8 and Investment Act of 2009, after an oppor-
9 tunity for notice and comment, an application
10 form for certification that provides the Admin-
11 istrator with sufficient information to insure
12 that the applicant meets the standards set forth
13 in subsection (b). The Administrator shall cer-
14 tify such development company or reject the ap-
15 plication within 60 calendar days from the date
16 the initial submission was received by the Ad-
17 ministrator. If the Administrator rejects the ap-
18 plication, the Administrator shall provide in
19 writing within 7 business days after the deci-
20 sion, the reason for rejecting the application.
21 "(B) APPEALS.—A development company
22 shall be able to appeal the disapproval of an ap-
23 plication under the procedures set forth in
24 paragraph (1)(D).".

1 **SEC. 212. CERTIFIED DEVELOPMENT COMPANY; OPER-**
2 **ATIONAL REQUIREMENTS.**

3 (a) OPERATIONAL REQUIREMENTS.—Section 502 of
4 the Small Business Investment Act of 1958 (15 U.S.C.
5 696) is amended to read as follows:

6 **"SEC. 502. OPERATIONAL REQUIREMENTS FOR CERTIFIED**
7 **DEVELOPMENT COMPANIES.**

8 "(a) MAINTENANCE OF STANDARDS FOR CERTIFI-
9 CATION.—Any company certified pursuant to section 501
10 shall continue to comply with the requirements of that sec-
11 tion to remain certified. The Administrator shall develop
12 a reporting form, which to the extent possible, incor-
13 porates other documents and reports already kept by cer-
14 tified development companies, demonstrating their contin-
15 ued compliance. The form shall be developed in a manner
16 that the estimated time for completion shall take no more
17 than 2 hours.

18 "(b) ETHICS AND CONFLICT OF INTERESTS.—

19 "(1) IN GENERAL.—A certified development
20 company, its officers, employees, and contractors
21 shall act ethically and avoid activities which con-
22 stitute a conflict of interest or appear to constitute
23 a conflict of interest. For purposes of this sub-
24 section, conduct that is unethical includes, but is not
25 limited to, the actions specified in section 120.140 of

1 title 13, Code of Federal Regulations, as in effect on
2 January 1, 2009.
3 "(2) BY ASSOCIATES.—An associate may not be
4 an officer, director, or manager of more than 1 cer-
5 tified development company. The term 'associate'
6 shall have the same meaning given the term 'Asso-
7 ciate of a CDC' in section 120.10 of title 13, Code
8 of Federal Regulations, as in effect on January 1,
9 2009. For the purposes of this subsection, 10 per-
10 cent shall be substituted wherever section 120.10 of
11 title 13, Code of Federal Regulation uses 20 per-
12 cent.
13 "(3) BY ENTITIES.—Except as provided in sec-
14 tions 501(b)(5) and 501(b)(6), no person, sole pro-
15 prietorship, partnership, or corporation shall control
16 or have managerial control of more than one cer-
17 tified development company. Control means any of
18 the following:
19 "(A) The ability to appoint or remove a
20 member of the company or member of its board
21 of directors.
22 "(B) The ability to modify or approve rate
23 or fee changes affecting revenues of the cer-
24 tified 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 certified 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.

1 "(e) PROHIBITED CONFLICT IN PROJECT LOANS.—

2 "(1) IN GENERAL.—Certified development com-
3 panies shall not recommend or approve a guarantee
4 of a debenture that will be collateralized by property
5 being constructed or acquired on which an institu-
6 tion, as provided in section 508(c)(1)(A), will have
7 a first lien position.

8 "(2) EXCEPTION.—The prohibition in para-
9 graph (1) shall not apply to any certified develop-
10 ment company that was affiliated with or part of
11 any entity that took a first lien position between Oc-
12 tober 1, 2003, and September 30, 2005.

13 "(f) AFFILIATION WITH LENDERS OPERATING
14 UNDER SECTION 7 OF THE SMALL BUSINESS ACT.—

15 "(1) PROHIBITION.—No certified development
16 company may invest in, or be an affiliate of, a lender
17 who participates in the loan programs authorized in
18 sections 7(a) and 7(c) of the Small Business Act (15
19 U.S.C. 636(a) and (c)).

20 "(2) EXCEPTION.—The prohibition in para-
21 graph (1) shall not apply to any certified develop-
22 ment company that is affiliated with an entity au-
23 thorized by the Administrator to operate under sec-
24 tion 7(a) of the Small Business Act if such affili-
25 ation occurred on or before November 6, 2003.

1 "(3) CREDIT UNION AFFILIATION.—A certified
2 development company shall not lose its status due to
3 an affiliation with an institution regulated by the
4 National Credit Union Administration if the develop-
5 ment company was affiliated with such an institu-
6 tion prior to January 1, 2007.

7 "(g) SERVICING AND PACKAGING GUARANTEED
8 LOANS.—A certified development company is authorized
9 to prepare applications for loans under sections 7(a) or
10 7(c) of the Small Business Act (15 U.S.C. 636(a) or (c)),
11 to service such loans, and to charge a reasonable fee for
12 servicing such loans.

13 "(h) USE OF EXCESS FUNDS.—Any funds generated
14 by a certified development company from the issuance of
15 debentures under this title, the sale of debentures in the
16 private secondary market, or fees described in subsection
17 (g) that remain unexpended after payment of staff, oper-
18 ating, and overhead expenses shall be used by the certified
19 development company for—

20 "(1) operating reserves;

21 "(2) expanding the area in which the certified
22 development company operates through the methods
23 authorized in section 505 (relating to multi-State
24 operation);

1 "(3) investment in other community and local
2 economic development activity or community devel-
3 opment primarily in the State from which such
4 funds were generated; or
5 "(4) investment in small business investment
6 companies subject to the limitations in subsection
7 (i).
8 "(i) LIMITATIONS WITH RESPECT TO SMALL BUSI-
9 NESS INVESTMENT COMPANIES.—A certified development
10 company shall not—
11 "(1) invest excess funds in a small business in-
12 vestment company that the Administrator deter-
13 mines to be capitally impaired as set forth in section
14 107.1830 of title 13, Code of Federal Regulations,
15 as in effect on January 1, 2009, or any successor
16 regulation to that regulation, but may maintain its
17 investment in such company if such investment was
18 made prior to the determination of capital impair-
19 ment; and
20 "(2) provide a debenture under this title to a
21 small business concern that has financing with a
22 small business investment company in which the cer-
23 tified development company has invested excess
24 funds.

1 "(j) ECONOMIC DEVELOPMENT ACTIVITIES.—A com-
2 pany certified pursuant to this section shall carry out each
3 of the following economic development activities that cre-
4 ate or preserve jobs in urban and rural areas:
5 "(1) The company shall provide long-term fi-
6 nancing to small business concerns through deben-
7 tures described in section 506.
8 "(2) The company shall operate any other pro-
9 gram to assist small business concerns or commu-
10 nities that promote local economic development and
11 job creation or preservation.
12 "(k) RESTRICTIONS ON ASSISTANCE.—
13 "(1) IN GENERAL.—After the date of enact-
14 ment of the Small Business Financing and Invest-
15 ment Act of 2009, no certified development company
16 may accept funding from any source, including any
17 Federal agency (as that term is defined in section
18 551 of title 5, United States Code) if the source im-
19 poses—
20 "(A) conditions on the types of small busi-
21 ness concerns that a certified development com-
22 pany may provide assistance to under this title;
23 or

1 "(B) conditions or requirements, directly
2 or indirectly, upon any small business concern
3 receiving assistance under this title.
4 "(2) EXCEPTION.—The conditions of subpara-
5 graphs (A) and (B) of paragraph (1) shall not apply
6 if the source provides all of the financing that will
7 be provided by the certified development company to
8 the small business concern, provided further that
9 any conditions or restrictions are limited solely to
10 the financing provided by the source of funding.
11 "(l) REVOCATION AND SUSPENSION.—The Adminis-
12 trator may suspend or revoke a certified development com-
13 pany's status if the Administrator determines, after a
14 hearing on the record as set forth in sections 554, 556,
15 and 557 of title 5, United States Code, that the certified
16 development company no longer—
17 "(1) meets the eligibility criteria established
18 under section 501 of this title;
19 "(2) satisfies the operational standards in this
20 section; or
21 "(3) complies with the Administrator's rules,
22 regulations, or provisions of law.
23 "(m) EFFECT OF SUSPENSION OR REVOCATION.—A
24 suspension or revocation under subsection (l) shall not af-
25 fect any outstanding debenture guarantee.".

1 **SEC. 213. ACCREDITED LENDERS PROGRAM.**

2 Section 503 of the Small Business Investment of
3 1958 (15 U.S.C. 697) is amended to read as follows:

4 **"SEC. 503. ACCREDITED LENDERS PROGRAM.**

5 "(a) ESTABLISHMENT.—

6 "(1) IN GENERAL.—A certified development
7 company may apply for status to become an accred-
8 ited certified development company if it meets the
9 operational standards of section 502 and the criteria
10 in subsection (b).

11 "(2) APPLICATION.—The Administrator shall,
12 after opportunity for notice and comment, develop
13 an application for certified development companies
14 seeking to become accredited certified development
15 companies.

16 "(3) PROCESSING OF APPLICATION.—The Ad-
17 ministrator shall make a determination within 30
18 days after a complete application has been filed by
19 the certified development company.

20 "(4) REAPPLICATION.—If the Administrator re-
21 jects the application, the Administrator shall provide
22 in writing the reasons for the rejection. Any certified
23 development company may reapply which will recom-
24 mence the processing time limits set forth in para-
25 graph (3), and such reapplication shall be limited to
26 addressing the reasons for rejection. If the Adminis-

1 trator rejects a second application, that shall be con-
2 sidered final agency action for purposes of chapter
3 7 of title 5, United States Code.
4 "(b) STANDARDS FOR ACCREDITED CERTIFIED DE-
5 VELOPMENT COMPANY PROGRAM.—The Administrator
6 shall designate a certified development company as accred-
7 ited if it meets the following standards:
8 "(1) Has been a certified development company
9 for not less than the preceding 12 months and has
10 issued debentures as authorized under this title dur-
11 ing that time period.
12 "(2) Has well-trained, qualified personnel who
13 are knowledgeable in the lending policies and proce-
14 dures for certified development companies.
15 "(3) Has the ability to process, close, and serv-
16 ice the loan issued under this title.
17 "(4) Has a loss rate on the company's deben-
18 tures that is reasonable and acceptable to the Ad-
19 ministrator.
20 "(5) Has a history of submitting to the Admin-
21 istrator complete and accurate debenture guaranty
22 application packages.
23 "(6) Has the ability to serve small business
24 credit needs for financing plant and equipment as a
25 certified development company.

1 "(c) EXPEDITED PROCESSING OF GUARANTEE AP-
2 PLICATIONS.—The Administrator shall develop an expe-
3 dited procedure for processing a guarantee application or
4 servicing action submitted by an accredited certified devel-
5 opment company. For purposes of this subsection, an ex-
6 pedited procedure is one that takes at least two business
7 days less than the processing performed for certified devel-
8 opment companies that have not been accredited.

9 "(d) SUSPENSION OR REVOCATION OF ACCREDITED
10 STATUS.—The Administrator may suspend or revoke a
11 certified development company's accredited status if the
12 Administrator determines, after a hearing on the record
13 as set forth in sections 554, 556, and 557 of title 5,
14 United States Code, that the certified development com-
15 pany no longer meets the eligibility criteria established
16 under this section (which shall not include a time limit
17 on the term of the certified development company's ac-
18 credited status) or failed to adhere to the Administrator's
19 rules, regulations, or is violating some other provision of
20 law. Such suspension or revocation shall have no effect
21 on the development company's status as certified.

22 "(e) EFFECT OF SUSPENSION OR REVOCATION ON
23 EXISTING GUARANTEES.—A suspension or revocation of
24 accredited status shall not affect any outstanding deben-
25 ture guarantee.

1 "(f) GRANDFATHER PROVISION.—Any certified de-
2 velopment company that was accredited by the date of en-
3 actment of the Small Business Financing and Investment
4 Act of 2009 shall remain accredited for 24 months after
5 that date. If the certified development company does not
6 have an application for accreditation approved by the Ad-
7 ministrator within the 24 months, its accreditation stand-
8 ard shall lapse.

9 "(g) AUTOMATIC QUALIFICATION.—

10 "(1) IN GENERAL.—Until the Administrator de-
11 velops procedures for granting accredited status, any
12 certified development company that was accredited
13 as of the date of enactment of the Small Business
14 Financing and Investment Act of 2009 shall be
15 deemed to be accredited.

16 "(2) APPLICATIONS.—Any certified develop-
17 ment company that satisfies the provision of para-
18 graph (1) shall have 24 months in which to submit
19 the application established by this section for accred-
20 ited status.

21 "(3) EFFECT WHILE APPLICATION PENDING.—
22 The denial or rejection of an application for accred-
23 ited status as set forth in this section shall have no
24 effect on the ability of a development company that
25 meets the standard set forth in paragraph (1) from

1 maintaining its status during the 24 months speci-
2 fied in this subsection.
3 "(h) PROMULGATION OF ACCREDITING STAND-
4 ARDS.—The Administrator shall develop standards for ac-
5 crediting, suspension, and revocation under the program
6 established by this section only after notice and an oppor-
7 tunity for comment as set forth in section 553(b) of title
8 5, United States Code. After the development of such
9 standards, the Administrator shall publish such standards
10 in the Code of Federal Regulations.
11 "(i) RULE OF CONSTRUCTION.—Any reference to the
12 term 'accredited lender' in any provision of law enacted,
13 or any regulation adopted, prior to the enactment of the
14 Small Business Financing and Investment Act of 2009
15 shall be deemed to be a reference to the term 'accredited
16 certified development company'.".
17 **SEC. 214. PREMIER CERTIFIED LENDER PROGRAM.**
18 Section 504 of the Small Business Investment Act
19 of 1958 (15 U.S.C. 697a) is amended to read as follows:
20 **"SEC. 504. PREMIER CERTIFIED LENDER PROGRAM.**
21 "(a) ESTABLISHMENT.—
22 "(1) IN GENERAL.—A certified development
23 company accredited under section 503 may apply for
24 status to become a premier certified development
25 company.

1 "(2) APPLICATION.—The Administrator shall,
2 after opportunity for notice and comment, develop
3 an application for accredited certified development
4 companies seeking to become premier certified devel-
5 opment companies.
6 "(3) PROCESSING OF APPLICATION.—The Ad-
7 ministrator shall make a determination within 60
8 days after a complete application has been filed by
9 an accredited certified development company.
10 "(4) REAPPLICATION.—If the Administrator re-
11 jects the application, the Administrator shall provide
12 in writing the reasons for the rejection. Any accred-
13 ited certified development company may reapply
14 which will recommence the processing time limits set
15 forth in paragraph (3), and such reapplication shall
16 be limited to addressing the reasons for rejection. If
17 the Administrator rejects a second application, that
18 shall be considered final agency action for purposes
19 of chapter 7 of title 5, United States Code.
20 "(b) STANDARDS FOR OBTAINING PREMIER CER-
21 TIFIED DEVELOPMENT COMPANY STATUS.—The Admin-
22 istrator shall designate an accredited certified develop-
23 ment company as a premier certified development com-
24 pany if the application submitted pursuant to subsection

1 (a) demonstrates that the accredited certified development
2 company meets the following standards:
3 "(1) Has been an accredited certified develop-
4 ment company for at least 12 months.
5 "(2) Has submitted to the Administrator ade-
6 quately analyzed debenture guarantee applications.
7 "(3) Has closed, in a proper manner following
8 the Administrator regulations, loans under this title.
9 "(4) Has serviced its loan portfolio in accord-
10 ance with the standards set by the Administrator.
11 "(5) Has established a loan loss reserve estab-
12 lished in accordance with this section that the Ad-
13 ministrator determines is sufficient to meet its obli-
14 gations to protect the Federal Government from the
15 risk of loss on each debenture guaranteed under this
16 section.
17 "(6) Has agreed, as part of the application and
18 in order to protect the Federal Government against
19 the risk of loss, to the following—
20 "(A) on account of a debenture, the pro-
21 ceeds of which were used to fund a loan ap-
22 proved prior to the date of enactment of the
23 Small Business Financing and Investment Act
24 of 2009, agrees to reimburse the Administrator
25 for 10 percent of any loss sustained by the Ad-

1 ministrator as a result of a default by the com-
2 pany in the payment of principal or interest on
3 a debenture issued by such company and guar-
4 anteed by the Administrator;
5 "(B) on account of a debenture, the pro-
6 ceeds of which were used to fund a loan ap-
7 proved prior to the date of enactment of the
8 Small Business Financing and Investment Act
9 of 2009 and which were issued during the pe-
10 riod in which the company had made a selection
11 pursuant to section 508(c)(7) of the Small
12 Business Investment Act of 1958, as in effect
13 on the day before such date of enactment,
14 agrees to reimburse the Administrator for 15
15 percent of any loss sustained by the Adminis-
16 trator as a result of a default by the company
17 in the payment of principal or interest on a de-
18 benture issued by such company and guaran-
19 teed by the Administrator; or
20 "(C) on account of a debenture, the pro-
21 ceeds of which are used to fund a loan approved
22 on or after the date of enactment of the Small
23 Business Financing and Investment Act of
24 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

1 applicable to loans approved during the
2 balance of such fiscal year commencing 30
3 days after notification to the development
4 company involved.

5 "(c) SUSPENSION OR REVOCATION OF PREMIER STA-
6 TUS.—The Administrator may suspend or revoke an ac-
7 credited certified development company's premier status
8 if the Administrator determines, after a hearing on the
9 record as set forth in sections 554, 556, and 557 of title
10 5, United States Code, that the accredited certified devel-
11 opment company no longer meets the eligibility criteria for
12 premier status as established under this section or failed
13 to adhere to the Administrator's rules, regulations, or is
14 violating some other provision of law. Such revocation or
15 suspension shall have no effect on its status as an accred-
16 ited certified development company.

17 "(d) LOAN LOSS RESERVE.—

18 "(1) ASSETS.—Each loan loss reserve main-
19 tained by the premier certified development company
20 for loans made pursuant to the authority in sub-
21 section (g)(1) shall be comprised of—

22 "(A) segregated funds on deposit in an ac-
23 count or accounts with a federally insured de-
24 pository institution or institutions selected by
25 the company, subject to a collateral assignment

1 in favor of, and in a format acceptable to, the
2 Administrator that shall amount to 10 percent
3 of the company's exposure as determined pursu-
4 ant to subsection (b)(6);
5 "(B) irrevocable letter or letters of credit,
6 with a collateral assignment in favor of, and a
7 commercially reasonable format acceptable to,
8 the Administrator; or
9 "(C) any combination of the assets de-
10 scribed in subparagraphs (A) and (B).
11 "(2) CONTRIBUTIONS.—The company shall
12 make contributions to the loss reserve, either cash or
13 letters of credit as provided above, in the following
14 amounts and at the following intervals:
15 "(A) 50 percent when a debenture is
16 closed.
17 "(B) 25 percent additional not later than
18 1 year after a debenture is closed.
19 "(C) 25 percent additional not later than
20 2 years after a debenture is closed.
21 "(3) REPLENISHMENT.—If a loss has been sus-
22 tained by the Administrator, any portion of the loss
23 reserve, and other funds provided by the premier
24 certified development company as necessary, may be
25 used to reimburse the Administrator for the premier

1 certified development company's share of the loss as
2 provided for in subsection (b)(6). If the premier cer-
3 tified development company utilizes the reserve, it
4 shall, within 30 calendar days, replace an equivalent
5 amount of funds.

6 "(4) DISBURSEMENTS.—

7 "(A) IN GENERAL.—The Administrator
8 shall allow the premier certified development
9 company to withdraw from the loss reserve
10 amounts attributable to any debenture that has
11 been repaid.

12 "(B) REDUCTION.—The Administrator
13 shall allow the premier certified development
14 company to withdraw from the loss reserve such
15 amounts as are in excess of 1 percent of the ag-
16 gregate outstanding balances of debentures to
17 which such loss reserve relates. The reduction
18 authorized by this subparagraph shall not apply
19 with respect to any debenture before 100 per-
20 cent of the contribution described in paragraph
21 (2) with respect to such debenture has been
22 made.

23 "(C) RULE OF CONSTRUCTION.—The pro-
24 vision contained in subparagraph (B) shall be
25 read as if enacted prior to a date 2 years and

1 90 days after the date of enactment of the
2 Small Business Financing and Investment Act
3 of 2009.
4 "(e) BUREAU OF PREMIER CERTIFIED DEVELOP-
5 MENT COMPANY LENDER OVERSIGHT.—
6 "(1) IN GENERAL.—There is hereby established
7 a Bureau of Premier Certified Development Com-
8 pany Lender Oversight in the Office of Lender Over-
9 sight at the Administration which shall have respon-
10 sibility and capability for carrying out oversight of
11 premier certified development companies and such
12 other responsibilities as the Administrator des-
13 ignates.
14 "(2) ANNUAL REVIEW.—The Bureau estab-
15 lished in paragraph (1) annually shall review the fi-
16 nancing made by each premier certified development
17 company. Such review shall include the premier cer-
18 tified development company's credit decisions and
19 general compliance with the eligibility requirements
20 for each financing approved as a result of its status
21 as a premier certified development company.
22 "(3) RANDOM AUDITS.—The Bureau shall de-
23 velop and implement a method for sampling the de-
24 bentures issued by premier certified development
25 companies. Such sampling shall be similar to the

1 random file audits of development companies that
2 utilize the Abridged Submission Method described in
3 chapter 4 of subpart C of Standard Operating Pro-
4 cedure 50 10 (5)(A) as was in effect on March 2,
5 2009.

6 "(4) REVIEW OF LENDERS PROVIDING SENIOR
7 FINANCING.—

8 "(A) CALCULATION OF LOAN LOSS
9 RATE.—The Bureau shall periodically calculate
10 the loss rate of all debentures approved under
11 this section and shall calculate a loss rate on
12 the basis of the total debentures attributable to
13 projects approved by premier certified develop-
14 ment companies in which each lender is a par-
15 ticipating lender.

16 "(B) NOTIFICATION.—If the Bureau deter-
17 mines that the loss rate on debentures involving
18 an individual lender exceeds the average for all
19 debentures approved under this section, it shall
20 advise the Administrator.

21 "(5) USE OF REVIEWS AND AUDITS.—The Ad-
22 ministrator shall consider the findings under para-
23 graphs (2), (3), and (4) in carrying out the respon-
24 sibilities under subsection (h).

25 "(f) SALE OF CERTAIN DEFAULTED LOANS.—

1 "(1) NOTICE.—If, upon default in repayment,
2 the Administrator acquires a debenture issued by a
3 premier certified development company and identi-
4 fies such loan for inclusion in a bulk asset sale of
5 defaulted or repurchased loans or other financing,
6 the Administrator shall give prior notice thereof to
7 any premier certified development company which
8 has a contingent liability under this section. The no-
9 tice shall be given to the premier certified develop-
10 ment company as soon as possible after the financ-
11 ing is identified, but not less than 90 days before
12 the date the Administrator first makes any records
13 on such financing available for examination by pro-
14 spective purchasers prior to its offering in a package
15 of loans for bulk sale.
16 "(2) LIMITATIONS.—The Administrator shall
17 not offer any loan described in paragraph (1) as
18 part of a bulk sale unless the Administrator—
19 "(A) provides prospective purchasers with
20 the opportunity to examine the Administration's
21 records with respect to such loan; and
22 "(B) provides the notice required by para-
23 graph (1).
24 "(g) LOAN APPROVAL AUTHORITY.—

1 "(1) IN GENERAL.—A premier certified develop-
2 ment company may, under conditions determined by
3 the Administrator in regulations published in the
4 Code of Federal Regulations, issue guarantees on
5 debentures, approve, authorize, close, service, fore-
6 close, litigate (except that the Administrator may
7 monitor conduct of any such litigation), and liq-
8 uidate loans that are funded with proceeds of a de-
9 benture issued by a premier certified development
10 company unless the Administrator advises the com-
11 pany that loans involving a specific institutional
12 lender are to be submitted to the Administrator for
13 further consideration, and approval by the Adminis-
14 trator.

15 "(2) PROGRAM GOALS.—Each premier certified
16 development company shall establish a goal of proc-
17 essing no less than 50 percent of the applications for
18 assistance under this title that the premier certified
19 development company receives. Failure to meet this
20 goal shall have no affect on the company's status as
21 a premier certified development company under this
22 section.

23 "(3) SCOPE OF REVIEW.—The approval of a
24 loan and guarantee of a debenture by a premier cer-
25 tified development company shall be subject to final

1 approval as to the eligibility of any guarantee by the
2 Administrator as set forth in section 506, but such
3 final approval shall not include review of decisions
4 by the premier certified development company in-
5 volving creditworthiness, loan closing, or compliance
6 with legal requirements imposed by law or regula-
7 tion.

8 "(h) SUSPENSION OR REVOCATION.—The Adminis-
9 trator may suspend or revoke an accredited certified devel-
10 opment company's premier status if the Administrator de-
11 termines, after a hearing on the record as set forth in sec-
12 tions 554, 556, and 557 of title 5, United States Code,
13 that the accredited certified development company no
14 longer meets the eligibility criteria established under this
15 section, fails to maintain adequate loan loss reserves man-
16 dated in this section even if it meets the other eligibility
17 requirements for premier status, or violates the Adminis-
18 trator's rules, regulations, or some other provision of law.
19 The Administrator shall consider the review of the premier
20 certified development company conducted pursuant to sub-
21 section (e) in determining whether to suspend or revoke
22 an accredited development company's premier status.
23 Such suspension or revocation shall have no effect on the
24 development company's status as an accredited certified
25 development company.

1 "(i) EFFECT OF SUSPENSION OR REVOCATION.—A
2 suspension or revocation of premier status shall not affect
3 any outstanding debenture guarantee.
4 "(j) RULE OF CONSTRUCTION.—Any reference to the
5 term 'premier certified lender' or 'PCL' in legislation en-
6 acted, or regulations adopted, prior to the enactment of
7 the Small Business Financing and Investment Act of 2009
8 shall be deemed to be a reference to the term 'premier
9 certified development company'.".

10 **SEC. 215. MULTI-STATE OPERATIONS.**

11 Section 505 of the Small Business Investment Act
12 of 1958 (15 U.S.C. 697b) is amended to read as follows:

13 **"SEC. 505. MULTI-STATE OPERATIONS.**

14 "(a) AUTHORIZATION.—The Administrator shall per-
15 mit an accredited or premier certified development com-
16 pany to make loans or issue debentures in any State that
17 is contiguous to the State of incorporation of that com-
18 pany only if the company—
19 "(1) has members, from each of the States in
20 which it operates with not fewer than 25 members
21 who reside in such States;
22 "(2) has a board of directors that contains not
23 fewer than 2 members from each State in which the
24 company makes loans and issues debentures and are
25 residents of that State;

1 "(3) maintains a separate loan committee to
2 process loans in each expansion State and the mem-
3 bers of the loan committee are solely residents of the
4 expansion State; and
5 "(4) files an application developed by the Ad-
6 ministrator which provides—
7 "(A) notice of the intention to make loans
8 in multiple States;
9 "(B) a specification of the States in which
10 the company intends to make loans;
11 "(C) a list of members in each expansion
12 State; and
13 "(D) a detailed statement on how the com-
14 pany will comply with the requirements of this
15 subsection.
16 "(b) LOAN COMMITTEES.—The requirements of
17 paragraph (3) of subsection (a) shall not require a devel-
18 opment company to establish a loan committee in its State
19 of incorporation or in a local economic area outside the
20 State of incorporation unless such area is part of an ex-
21 pansion State.
22 "(c) REVIEW.—
23 "(1) IN GENERAL.—The Administrator shall re-
24 view each application for expansion under subsection
25 (a), but such review shall be limited to that informa-

1 tion needed to determine whether the company will
2 comply with the requirements of subsection (a).
3 "(2) DEADLINE FOR DECISION.—The Adminis-
4 trator shall make a decision on each application
5 under subsection (a) within 15 calendar days after
6 the receipt of the application. If no such decision is
7 granted, the application is deemed to be approved
8 and no further action is required by the applicant or
9 the Administrator for the company to expand into
10 the States specified in the application.
11 "(3) APPLICATION RESUBMITTAL.—If the Ad-
12 ministrator rejects the application for expansion, the
13 Administrator shall provide in writing the reasons
14 for denial within 10 calendar days of the decision.
15 The applicant then may resubmit the application but
16 the review of such resubmitted applications will be
17 limited only to the areas in which the Administrator
18 found the original application deficient. The dead-
19 lines in paragraph (2) shall apply to resubmitted ap-
20 plications.
21 "(4) APPEAL.—If a resubmitted application is
22 denied, the applicant may, within 10 calendar days
23 after receipt of the disapproval, appeal such dis-
24 approval. The Administrator shall conduct a hearing
25 to determine such appeal pursuant to sections 554,

1 556, and 557 of title 5, United States Code, and
2 shall issue a decision not later than 45 days after
3 the appeal is filed. The decision on appeal shall con-
4 stitute final agency action for purposes of chapter 7
5 of title 5, United States Code.

6 "(d) FAILURE TO DEVELOP APPLICATION.—If the
7 Administrator fails to develop an application as required
8 in subsection (a)(4) within 60 days of the enactment of
9 the Small Business Financing and Investment Act of
10 2009, an accredited or premier certified development com-
11 pany only need submit the information required in sub-
12 section (a) to the Administrator to be deemed eligible to
13 commence operations authorized by this section. Such eli-
14 gibility shall not be terminated if the Administrator devel-
15 ops an application after the 60-day period set forth in this
16 subsection.

17 "(e) AGGREGATE ACCOUNTING.—An accredited or
18 premier certified development company authorized to op-
19 erate in multiple States pursuant to this section may
20 maintain an aggregate accounting of all revenue and ex-
21 penses of the company for purposes of this title.

22 "(f) LOCAL JOB CREATION REQUIREMENTS.—

23 "(1) IN GENERAL.—Any company making loans
24 in multiple States as authorized in this section shall
25 not count jobs created or retained in one State to-

1 wards any applicable job creation or retention re-
2 quirements mandated by this title in another State.
3 "(2) APPLICABILITY.—Any company operating
4 under the authority of this section shall be required
5 to meet any job creation or retention requirement of
6 this title on the date that is 2 years after the cer-
7 tified development company closed its first loan in
8 its new State of operation.
9 "(g) CONTIGUOUS STATES.—For the purposes of this
10 section, the States of Alaska and Hawaii shall be deemed
11 to be contiguous to any State abutting the Pacific Ocean.
12 Territories of the United States located in the Pacific
13 Ocean shall be deemed to be contiguous to any State abut-
14 ting the Pacific Ocean, including Alaska and Hawaii, and
15 territories of the United States located in the Caribbean
16 Sea shall be deemed contiguous to any State abutting the
17 Gulf of Mexico.
18 "(h) EXEMPTION FOR LOCAL ECONOMIC AREAS.—
19 Except as provided in subsection (a)(3) with respect to
20 loan committees, any certified, accredited, or premier de-
21 velopment company or applicant operating in a local eco-
22 nomic development area that crosses the border of another
23 State shall not be considered to be operating under the
24 provisions of this section and shall not be required to com-

1 ply with the requirements of this section for multi-State
2 operation.".

3 **SEC. 216. GUARANTY OF DEBENTURES.**

4 Section 506 of the Small Business Investment Act
5 of 1958 (15 U.S.C. 697c) is amended to read as follows:

6 **"SEC. 506. GUARANTY OF DEBENTURES.**

7 "(a) AUTHORITY TO GUARANTEE.—Except as pro-
8 vided in subsection (c), the Administrator may guarantee
9 the timely payment of all principal and interest as sched-
10 uled on any debenture issued by a certified development
11 company.

12 "(b) TERMS AND CONDITIONS OF THE GUAR-
13 ANTEE.—Such guarantees may be made on such terms
14 and conditions as the Administrator may by regulation,
15 published in the Code of Federal Regulations, determine
16 to be appropriate, except that the Administrator shall not
17 decline to issue such guarantee when the ownership inter-
18 ests of the small business concern and the ownership inter-
19 ests of the property to be financed with the proceeds of
20 the loan made pursuant to subsection (e)(1) are not iden-
21 tical because one or more of the following classes of rel-
22 atives have an ownership interest in either the small busi-
23 ness concern or the property: father, mother, son, daugh-
24 ter, wife, husband, brother, or sister, if the Administrator
25 or his designee has determined on a case-by-case basis

1 that such ownership interest, such guarantee, and the pro-
2 ceeds of such loan, will substantially benefit the small
3 business concern.

4 "(c) FULL FAITH AND CREDIT.—The full faith and
5 credit of the United States is pledged to the payment of
6 all amounts guaranteed under this section.

7 "(d) SUBORDINATION.—Any debenture issued by a
8 certified development company with respect to which a
9 guarantee is made under this section may be subordinated
10 by the Administrator to any other debenture, promissory
11 note, or other debt or obligation of such company.

12 "(e) STANDARDS FOR ADMINISTRATOR GUARAN-
13 TEES.—No guarantee may be made with respect to any
14 debenture under this section unless—

15 "(1) the debenture is issued for the purpose of
16 making one or more loans to small business concerns
17 the proceeds of which shall be used for the purposes
18 set forth in section 507;

19 "(2) the interest rate on such debentures is not
20 less than the rate of interest determined by the Sec-
21 retary of the Treasury for purposes of section
22 303(b);

23 "(3) the aggregate amount of such debenture
24 does not exceed the amount of the loans to be made
25 from the proceeds of such debenture plus, at the

1 election of the borrower, other amounts attributable
2 to the administrative and closing costs of such loans,
3 except for the attorney fees of the borrower;
4 "(4) the amount of any loan to be made from
5 such proceeds does not exceed an amount equal to
6 50 percent of the cost of the project with respect to
7 which such loan is made;
8 "(5) the Administrator, except to the extent
9 provided in section 504 with respect to premier cer-
10 tified development companies, approves each loan to
11 be made from such proceeds; and
12 "(6) with respect to each loan made from the
13 proceeds of such debenture, the Administrator—
14 "(A) assesses and collects a fee, which
15 shall be payable by the borrower, in an amount
16 established annually by the Administration,
17 which amount shall not exceed—
18 "(i) the lesser of—
19 "(I) 0.9375 percent per year of
20 the outstanding balance of the loan;
21 or
22 "(II) the minimum amount nec-
23 essary to reduce the cost (as defined
24 in section 502 of the Federal Credit
25 Reform Act of 1990) to the Adminis-

1 trator of purchasing and guaranteeing
2 debentures under this title to zero;
3 and
4 "(ii) 50 percent of the amount estab-
5 lished under clause (i) in the case of a loan
6 made during the 2-year period beginning
7 on October 1, 2002, for the life of the
8 loan; and
9 "(B) uses the proceeds of such fee to offset
10 the cost (as such term is defined in section 502
11 of the Federal Credit Reform Act of 1990) to
12 the Administrator of making guarantees under
13 this section.
14 "(f) INTEREST RATES ON COMMERCIAL LOANS.—
15 Notwithstanding the provisions of the constitution or laws
16 of any State limiting the rate or amount of interest which
17 may be charged, taken, received, or reserved, the max-
18 imum legal rate of interest on any commercial loan which
19 funds any portion of the cost of the project financed pur-
20 suant to this title which is not funded by a debenture
21 guaranteed under this section shall be a rate which is es-
22 tablished by the Administrator who shall publish such rate
23 quarterly in, at a minimum, the Federal Register and on
24 the Administration's website.

1 "(g) DEBENTURE REPAYMENT.—Any debenture that
2 is issued under this section shall provide for the payment
3 of principal and interest on a semiannual basis.
4 "(h) CHARGES FOR ADMINISTRATOR'S EXPENSES.—
5 The Administrator may impose an additional charge for
6 administrative expenses with respect to each debenture for
7 which payment of principal and interest is guaranteed
8 under this section. Such administrative expenses may in-
9 clude—
10 "(1) development company fees for processing,
11 closing, servicing, late payment, or loan assumption;
12 "(2) agent or trustee fees for central servicing,
13 underwriters, or debenture funding; and
14 "(3) fees charged by the Administrator for the
15 debenture guaranty and from the certified develop-
16 ment company to reduce the subsidy cost.
17 "(i) PARTICIPATION FEE.—The Administrator shall
18 collect a one-time fee in an amount equal to 50 basis
19 points on the total participation in any project of any
20 State or local government, bank, other financial institu-
21 tion, or foundation or not-for-profit institution. Such fee
22 shall be imposed only when the participation of the entity
23 described in the previous sentence will occupy a senior
24 credit position to that of the development company. All
25 proceeds of the fee shall be used to offset the cost (as

1 that term is defined in section 502 of the Credit Reform
2 Act of 1990) to the Administrator of making guarantees
3 under this section.

4 "(j) CERTIFIED DEVELOPMENT COMPANY FEE.—
5 The Administrator shall collect annually from each devel-
6 opment company a fee of 0.125 percent of the outstanding
7 principal balance of any guaranteed debenture authorized
8 by the Administrator after September 30, 1996. Such fee
9 shall be derived from the servicing fees collected by the
10 certified development company pursuant to regulation,
11 and shall not be derived from any additional fees imposed
12 on small business concerns. All proceeds of the fee shall
13 be used to offset the cost (as that term is defined in sec-
14 tion 502 of the Credit Reform Act of 1990) to the Admin-
15 istrator of making guarantees under this section.

16 "(k) EFFECTIVE DATE.—The fees authorized by this
17 section shall apply to any financing approved under this
18 title on or after October 1, 1996.

19 "(l) CALCULATION OF SUBSIDY RATE.—All fees, in-
20 terest, and profits received and retained by the Adminis-
21 trator under this section shall be included in the calcula-
22 tions made by the Director of the Office of Management
23 and Budget to offset the cost (as that term is defined in
24 section 502 of the Federal Credit Reform Act of 1990)

1 to the Administrator of purchasing and guaranteeing de-
2 bentures under this title.
3 "(m) ACTIONS UPON DEFAULT.—
4 "(1) INITIAL ACTIONS.—Not later than the
5 45th day after the date on which a payment on a
6 loan funded through a debenture guaranteed under
7 this section is due and not received, the Adminis-
8 trator shall—
9 "(A) take all necessary steps to bring such
10 loan current; or
11 "(B) implement a formal written deferral
12 agreement.
13 "(2) PURCHASE OR ACCELERATION OF DEBEN-
14 TURE.—Not later than the 65th day after the date
15 on which a payment on a loan described in para-
16 graph (1) is due and not received, and absent a for-
17 mal written deferral agreement, the Administrator
18 shall take all necessary steps to purchase or accel-
19 erate the debenture.
20 "(3) PREPAYMENT PENALTIES.—With respect
21 to the portion of any project derived from funds not
22 provided by a debenture issued by a certified devel-
23 opment company or borrower, the Administrator—

1 "(A) shall negotiate the elimination of any
2 prepayment penalties or late fees on defaulted
3 loans made prior to September 30, 1996;
4 "(B) shall not pay any prepayment penalty
5 or late fee on the default based purchase of
6 loans issued after September 30, 1996; and
7 "(C) shall not pay a default interest rate
8 higher than the interest rate on the note prior
9 to the date of default for any project financed
10 after September 30, 1996.
11 "(4) COLLECTION AND SERVICING.—
12 "(A) IN GENERAL.—In the event of the de-
13 fault of any loan and the repurchase of a de-
14 benture guaranteed by the Administrator under
15 this title, the Administrator shall continue to
16 delegate to the central servicing agent that was
17 contracted for that service as of January 1,
18 2009, or successor contractor the authority to
19 collect and disburse all funds or payments re-
20 ceived on such defaulted loans, including pay-
21 ments from guarantors or on notes in com-
22 promise of the original note. The central serv-
23 icing agent shall continue to provide an ac-
24 counting of income and expenses for any such
25 loan on the same basis it does for any other

1 loan issued under this title. The central serv-
2 icing agent shall make the accounting of income
3 and expenses and reports thereon available as
4 requested by the certified development company
5 that issued the debenture or the Administrator.
6 "(B) EFFECTIVE DATE.—The require-
7 ments of subparagraph (A) shall become effec-
8 tive 180 days after the date of enactment of the
9 Small Business Financing and Investment Act
10 of 2009.".

11 **SEC. 217. ECONOMIC DEVELOPMENT THROUGH DEBEN-**
12 **TURES.**

13 Section 507 of the Small Business Investment Act
14 of 1958 (15 U.S.C. 697d) is amended to read as follows:

15 **"SEC. 507 ECONOMIC DEVELOPMENT AND DEBENTURES.**

16 "(a) IN GENERAL.—A certified development company
17 shall be prohibited from issuing a debenture under this
18 title unless the project funded with the debenture meets
19 one of the following economic development objectives:
20 "(1) The creation of job opportunities within
21 two years of the completion of the project or the
22 preservation or retention of jobs attributable to the
23 project.
24 "(2) Improving the economy of the locality,
25 such as stimulating other business development in

1 the community, bringing new income into the area,
2 or assisting the community in diversifying and stabi-
3 lizing its economy.
4 "(3) The achievement of one or more of the fol-
5 lowing public policy goals:
6 "(A) Business district revitalization or ex-
7 pansion of businesses in low-income commu-
8 nities which would be eligible for a new markets
9 tax credit under section 45D(a) of the Internal
10 Revenue Code of 1986, or implementing regula-
11 tions issued under that section.
12 "(B) Expansion of exports.
13 "(C) Expansion of minority business devel-
14 opment or women-owned business development.
15 "(D) Rural development.
16 "(E) Expansion of small business concerns
17 owned and controlled by veterans, as defined in
18 section 3(q) of the Small Business Act (15
19 U.S.C. 632(q)), especially service-disabled vet-
20 erans, as defined in such section.
21 "(F) Enhanced economic competition, in-
22 cluding the advancement of technology, plan re-
23 tooling, conversion to robotics, or competition
24 with imports.

1 "(G) Changes necessitated by Federal
2 budget cutbacks, including defense related in-
3 dustries.
4 "(H) Business restructuring arising from
5 federally mandated standards or policies affect-
6 ing the environment or the safety and health of
7 employees.
8 "(I) Reduction of energy consumption by
9 at least 10 percent.
10 "(J) Increased use of sustainable design,
11 including designs that reduce the use of green-
12 house gas emitting fossil fuels, or low-impact
13 design to produce buildings that reduce the use
14 of nonrenewable resources and minimize envi-
15 ronmental impact.
16 "(K) Plant, equipment, and process up-
17 grades of renewable energy sources such as the
18 small-scale production of energy for individual
19 buildings or communities consumption, com-
20 monly known as micropower, or renewable fuels
21 producers including biodiesel and ethanol pro-
22 ducers.
23 "(4) Debt refinancing to the extent permitted
24 by subsection (d).

1 "(b) JOB CREATION AND RETENTION REQUIRE-
2 MENTS.—
3 "(1) IN GENERAL.—A project meets the job
4 creation or retention objective set forth in subsection
5 (a)(1) if the project creates or retains one job for
6 every $65,000 guaranteed by the Administrator, ex-
7 cept that the amount shall be $100,000 in the case
8 of a project of a small manufacturer.
9 "(2) EXCEPTIONS.—
10 "(A) Paragraph (1) shall not apply to a
11 project for which eligibility is based on the ob-
12 jectives set forth in subsection (a)(2) or (a)(3)
13 if the certified development company's portfolio
14 of outstanding debentures creates or retains one
15 job for every $65,000 guaranteed by the Ad-
16 ministrator.
17 "(B) For projects in Alaska, Hawaii,
18 State-designated enterprise zones, empower-
19 ment zones, enterprise communities, or labor
20 surplus areas designated by the Administrator,
21 the certified development company's portfolio
22 may average not more than $75,000 per job
23 created or retained.

1 "(C) Loans for projects of small manufac-
2 turers shall be excluded from the calculations in
3 subparagraphs (A) and (B).
4 "(c) COMBINATION OF CERTAIN GOALS.—A small
5 business concern that is unconditionally owned by more
6 than 1 individual, or a corporation, the stock of which is
7 owned by more than 1 individual, shall be deemed to have
8 achieved a goal under subsection (a)(3) if a combined own-
9 ership share of not less than 51 percent is held by individ-
10 uals who are in 1 of, or a combination of, the groups de-
11 scribed in subparagraphs (C) or (E) of subsection (a)(1).
12 "(d) COMPOSITION OF THE PROJECT.—
13 "(1) IN GENERAL.—The projects described in
14 this section shall include, but not be limited to, plant
15 acquisition, construction, conversion, expansion (in-
16 cluding the acquisition of land), equipment and re-
17 lated project costs, or to acquire the stock of a cor-
18 poration (as long as the value of the loan for the ac-
19 quisition of the stock does not exceed the fixed asset
20 value attributable to such assets as would be eligible
21 for financing under subsection (a)).
22 "(2) DEBT REFINANCING.—Any financing ap-
23 proved under this title may include a limited amount
24 of debt refinancing if the project involves the expan-
25 sion of a small business concern.

1 "(3) LIMITATION.—The amount of the existing
2 indebtedness may be refinanced and added to the ex-
3 pansion cost if—
4 "(A) the existing indebtedness does not ex-
5 ceed 50 percent of the project cost of the ex-
6 pansion;
7 "(B) the proceeds of the indebtedness were
8 used to acquire land, including a building situ-
9 ated thereon, to construct a building thereon, or
10 to purchase equipment;
11 "(C) the existing indebtedness is
12 collateralized by fixed assets;
13 "(D) the existing indebtedness was in-
14 curred for the benefit of the small business con-
15 cern;
16 "(E) the financing under this title will be
17 used only for refinancing existing indebtedness
18 or costs relating to the project financed under
19 this title;
20 "(F) the financing under this title will pro-
21 vide a substantial benefit to the borrower when
22 prepayment penalties, financing fees, and other
23 financing costs are accounted for;
24 "(G) the borrower has been current on all
25 payments due on the existing debt for not less

1 than 1 year preceding the date of refinancing;
2 and
3 "(II) the financing under this title will
4 provide better terms or rate of interest than the
5 existing indebtedness at the time of refinancing.
6 "(e) DEFINITION.—For purposes of subparagraphs
7 (J) and (K) of subsection (a)(3), the terms included have
8 the meanings given those terms under the Leadership in
9 Energy and Environmental Design (more generally re-
10 ferred to as LEED) standard for green building certifi-
11 cation, as determined by the Administrator through regu-
12 lation to be published in the Code of Federal Regula-
13 tions.".

14 **SEC. 218. PROJECT FUNDING REQUIREMENTS.**

15 Section 508 of the Small Business Investment Act
16 of 1958 (15 U.S.C. 697e) is amended to read as follows:

17 **"SEC. 508. PROJECT FUNDING REQUIREMENTS.**

18 "(a) IN GENERAL.—Any project described in section
19 507 must meet the funding standards set forth in this sec-
20 tion.
21 "(b) SIZE OF DEBENTURE.—The Administrator shall
22 only be permitted to guarantee debenture issued by a cer-
23 tified development company up to the following amounts:
24 "(1) $3,000,000 for any project of a small busi-
25 ness concern.

1 "(2) $4,000,000 for any project that meets the
2 public policy goals set forth in section 507(a)(3).
3 "(3) $4,000,000 for any project to be located in
4 a low-income community as that term is described in
5 section 507(a)(3)(A).
6 "(4) $8,000,000 for each project of a small
7 manufacturer.
8 "(5) $8,000,000 for each project that reduces
9 the borrower's energy consumption by at least 10
10 percent.
11 "(6) $8,000,000 for each project that generates
12 renewable energy or renewable fuels, such as, but
13 not limited to, biodiesel or ethanol production.
14 "(7) $10,000,000 for each project for a small
15 business concern that constitutes a major source of
16 employment as that term is used in section
17 7(b)(3)(E) of the Small Business Act (15 U.S.C.
18 636(b)(3)(E)).
19 "(c) FUNDING FROM SOURCES OTHER THAN DE-
20 BENTURES ISSUED BY CERTIFIED DEVELOPMENT COM-
21 PANIES.—
22 "(1) IN GENERAL.—Any project financed pur-
23 suant to this title must have the following contribu-
24 tions from parties other than the debenture issued
25 by the certified development company:

1 "(A) FUNDING FROM INSTITUTIONS.—

2 "(i) If a small business concern pro-

3 vides—

4 "(I) the minimum contribution

5 required by subparagraph (B), not

6 less than 50 percent of the total cost

7 of any project financed shall come

8 from State or local governments,

9 banks or other financial institutions,

10 or foundations or other not-for-profit

11 institutions; and

12 "(II) more than the minimum

13 contribution required under subpara-

14 graph (B), any excess contribution

15 may be used to reduce the amount re-

16 quired from institutions described in

17 subclause (I), except that the amount

18 provided by such institution may not

19 be reduced to an amount that is less

20 than the amount of the loan made by

21 the Administrator.

22 "(B) FUNDING FROM SMALL BUSINESS

23 CONCERNS.—The small business concern (or its

24 owners, stockholders, or affiliates) that will

1 have a project financed pursuant to this title
2 shall provide—
3 "(i) at least 15 percent of the total
4 cost of the project financed if the small
5 business concern has been in operation for
6 a period of 2 years or less;
7 "(ii) at least 15 percent of the total
8 cost of the project financed if the project
9 involves construction of a limited or single
10 purposed building or structure;
11 "(iii) at least 20 percent of the total
12 cost of the project financed if the project
13 involves both of the conditions in clauses
14 (i) and (ii); or
15 "(iv) at least 10 percent of the total
16 cost of the project financed and not cov-
17 ered by clauses (i), (ii), or (iii), at the dis-
18 cretion of the certified development com-
19 pany.
20 "(2) SELLER FINANCING.—Seller-provided fi-
21 nancing may be used to meet the requirements of
22 paragraph (1)(B), if the seller subordinates the in-
23 terest of the seller in the property to the debenture
24 guaranteed by the Administrator.
25 "(3) COLLATERALIZATION.—

1 "(A) IN GENERAL.—The collateral pro-
2 vided by the small business concern shall gen-
3 erally include a subordinate lien position on the
4 property being financed under this title, and is
5 only one of the factors to be evaluated in the
6 credit determination. Additional collateral shall
7 be required only if the Administrator deter-
8 mines, on a case-by-case basis, that additional
9 security is necessary to protect the interest of
10 the Government.
11 "(B) APPRAISALS.—With respect to com-
12 mercial real property provided by the small
13 business concern as collateral, an appraisal of
14 the property by a State licensed or certified ap-
15 praiser—
16 "(i) shall be required by the Adminis-
17 trator before disbursement of the loan if
18 the estimated value of that property is
19 more than $400,000; or
20 "(ii) may be required by the Adminis-
21 trator or the lender before disbursement of
22 the loan if the estimated value of that
23 property is $400,000 or less, and such ap-
24 praisal is necessary for appropriate evalua-
25 tion of creditworthiness.

1 "(C) ADJUSTMENT.—The Administrator
2 shall periodically adjust the amount under sub-
3 paragraph (B) to account for the effects of in-
4 flation, provided that no such adjustment shall
5 be less than $50,000.
6 "(4) LIMITATION ON LEASING.—
7 "(A) If the project funded under this sec-
8 tion includes the acquisition of a facility or the
9 construction of a new facility, the small busi-
10 ness concern—
11 "(i) shall permanently occupy and use
12 not less than 50 percent of the project
13 property; and
14 "(ii) may, on a temporary or perma-
15 nent basis, lease to others not more than
16 50 percent of the project property.
17 "(B) For purposes of this paragraph, the
18 term 'project property' means—
19 "(i) the building and any exterior
20 areas used in connection with the building
21 or a part thereof and includes all of the
22 parcels of real property included in the
23 project in the aggregate; and
24 "(ii) occupancy and use of the project
25 property by the operating company shall be

1 deemed to be occupancy and use by the
2 small business concern that received fund-
3 ing under this section.
4 "(d) REGULATIONS.—(1) The Administrator shall
5 promulgate regulations, after notice and comment, to im-
6 plement the provisions of this section within 60 days after
7 enactment of the Small Business Financing and Invest-
8 ment Act of 2009. The Administrator may limit the com-
9 ment period to 15 days to meet this deadline.
10 "(2) If the Administrator fails to promulgate the reg-
11 ulations as provided in paragraph (1), all leases entered
12 into, absent clear and convincing evidence of fraud, shall
13 be deemed to be in compliance with the limitations on leas-
14 ing in this subparagraph for purposes of honoring the
15 guarantee on the debenture issued by the certified develop-
16 ment company.
17 "(3) Any regulation of the Administrator or interpre-
18 tation of any regulation by the Administrator or the Office
19 of Hearings and Appeals that restricts the use of proceeds
20 for leased projects that was in effect on the date of enact-
21 ment of the Small Business Financing and Investment Act
22 of 2009 shall hereby cease to apply.
23 "(4) Any interpretation of the leasing provisions
24 issued by the Administrator prior to the issuance of regu-
25 lations required by paragraph (1) shall be considered null

1 and void and may be not be used in any court of com-
2 petent jurisdiction, be it Federal or State court, to dis-
3 honor any guarantee of a debenture issued by a certified
4 development company for a project funded pursuant to
5 this section.

6 "(e) OWNERSHIP CALCULATION.—Ownership re-
7 quirements to determine the eligibility of a small business
8 concern that applies for funding under this title shall be
9 determined without regard to any ownership interest of
10 a spouse arising solely from the application of the commu-
11 nity property laws of a State for purposes of determining
12 marital interests.

13 "(f) COMBINATION FINANCING.—Financing under
14 this title may be provided to a borrower in the maximum
15 amount provided in this section, and a loan guarantee
16 under section 7(a) of the Small Business Act (15 U.S.C.
17 636(a)) may be provided to the same borrower in the max-
18 imum amount provided in section 7(a)(3)(A) of such Act,
19 to the extent that the borrower otherwise qualifies for such
20 assistance.

21 "(g) RULES FOR DEBENTURES FUNDING PROJECTS
22 IN LOW-INCOME AREAS.—

23 "(1) SIZE STANDARDS.—For purposes of deter-
24 mining the size of a small business concern seeking
25 funds for a project described in subsection (b)(3),

1 the size standard promulgated by the Administrator
2 in section 121.201 of title 13, Code of Federal Reg-
3 ulations, as in effect on January, 1, 2009, or any
4 successor regulation, shall be increased by 25 per-
5 cent.

6 "(2) PERSONAL LIQUIDITY.—

7 "(A) IN GENERAL.—The amount of per-
8 sonal resources of an owner for a project de-
9 scribed in subsection (b)(3) that are excluded
10 from the amount required to reduce the portion
11 of the project funded by the Administrator shall
12 be not less than 25 percent more than that re-
13 quired for funding of any other project de-
14 scribed in subsection (b).

15 "(B) DEFINITION.—For purposes of sub-
16 paragraph (A), the term 'owner' means any
17 person that owns not less than 20 percent of
18 the equity or has not less than 20 percent of
19 the voting rights (in the case of a small busi-
20 ness organized as a partnership) of a small
21 business concern seeking funds under this sec-
22 tion.

23 "(h) APPLICABILITY OF CREDIT ELSEWHERE AND
24 PERSONAL RESOURCES REGULATIONS.—Except as pro-
25 vided in subsection (c)(1)(B) with respect to project fund-

1 ing, the Administrator shall be prohibited from applying
2 the regulations set forth in sections 120.101 and 120.102
3 of title 13, Code of Federal Regulations, as in effect on
4 January 1, 2009, or any successor regulation that applies
5 a credit elsewhere or personal resources test to any appli-
6 cation for a loan under this title pending or filed after
7 the date of enactment of the Small Business Financing
8 and Investment Act of 2009.".

9 **SEC. 219. PRIVATE DEBENTURE SALES AND POOLING OF**
10 **DEBENTURES.**

11 Section 509 of the Small Business Investment Act
12 of 1958 (15 U.S.C. 697f) is amended to read as follows:

13 **"SEC. 509. PRIVATE DEBENTURE SALES AND POOLING OF**
14 **DEBENTURES.**

15 "(a) PRIVATE DEBENTURE SALES.—Notwith-
16 standing any other law, rule, or regulation, the Adminis-
17 trator shall sell to investors, either publicly or by private
18 placement, debentures issued by certified development
19 companies pursuant to this title for the full amount of the
20 program levels authorized in each fiscal year and if there
21 is not authorization of a level, the amount of debentures
22 actually issued.

23 "(b) FEDERAL FINANCING BANK.—Nothing in any
24 provision of law shall be construed to authorize the Fed-
25 eral Financing Bank to acquire—

1 "(1) any obligation the payment of principal or
2 interest on which at any time has been guaranteed
3 in whole or in part under this title and which is
4 being sold pursuant to the provisions of this section;
5 "(2) any obligation which is an interest in any
6 obligation which is an interest in any obligation de-
7 scribed in paragraph (1); or
8 "(3) any obligation which is secured by, or sub-
9 stantially all of the value of which is attributable to,
10 any obligation described in paragraph (1) or (2).
11 "(c) POOLING OF DEBENTURES.—
12 "(1) IN GENERAL.—The Administrator is au-
13 thorized to issue trust certificates representing own-
14 ership of all or a fractional part of debentures issued
15 by certified development companies and guaranteed
16 under this title if such trust certificates are based on
17 and backed by a trust or pool approved by the Ad-
18 ministrator and composed solely of guaranteed de-
19 bentures.
20 "(2) GUARANTEE OF TRUST CERTIFICATES.—
21 The Administrator is authorized, upon such terms
22 and conditions as are deemed appropriate, to guar-
23 antee the timely payment of the principal of and in-
24 terest on trust certificates issued by the Adminis-
25 trator or its agent for purposes of this section. Such

1 guarantee shall be limited to the extent of principal
2 and interest on the guaranteed debentures which
3 compose the trust or pool. In the event that a deben-
4 ture in such trust or pool is prepaid, either volun-
5 tarily or in the event of default, the guarantee of
6 timely payment of principal and interest on the trust
7 certificates shall be reduced in proportion to the
8 amount of principal and interest such prepaid deben-
9 ture represents in the trust or pool. Interest on pre-
10 paid or defaulted debentures shall accrue and be
11 guaranteed by the Administrator only through the
12 date of payment on the guarantee. During the term
13 of the trust certificate, it may be called for redemp-
14 tion due to prepayment or default of all debentures
15 constituting the pool.

16 "(3) FULL FAITH AND CREDIT.—The full faith
17 and credit of the United States is pledged to the
18 payment of all amounts which may be required to be
19 paid under any guarantee of such trust certificates
20 issued by the Administrator or its agent pursuant to
21 this section.

22 "(4) PROHIBITION ON GUARANTEE FEE FOR
23 POOLS.—The Administrator shall not collect any fee
24 for any guarantee under this section, provided that
25 nothing herein shall preclude any agent of the Ad-

1 ministrator from collecting a fee approved by the
2 Administrator for the functions performed in para-
3 graph (6)(F).
4 "(5) SUBROGATION.—
5 "(A) IN GENERAL.—In the event the Ad-
6 ministrator pays a claim under a guarantee
7 issued under this section, it shall be subrogated
8 fully to the rights satisfied by such payment.
9 "(B) ADMINISTRATOR EXERCISE OF
10 RIGHTS.—No Federal, State, or local law shall
11 preclude or limit the exercise by the Adminis-
12 trator of its ownership rights in the debentures
13 constituting the trust or pool against which the
14 trust certificates are issued.
15 "(6) CENTRAL REGISTRATION.—
16 "(A) IN GENERAL.—The Administrator
17 shall provide for a central registration of all
18 trust certificates sold pursuant to this section.
19 "(B) CONTRACT.—The Administrator shall
20 contract with an agent to carry out on behalf
21 of the Administrator the central registration
22 functions of this section and the issuance of
23 trust certificates to facilitate pooling.
24 "(C) BOND.—The Administrator shall re-
25 quire the contractor to provide a fidelity bond

1 or insurance in such amounts as is deemed nec-
2 essary to fully protect the interests of the Gov-
3 ernment.
4 "(D) DISCLOSURE REQUIREMENTS.—The
5 Administrator shall, prior to any sale, require
6 the seller to disclose to a purchaser of a trust
7 certificate issued pursuant to this section, infor-
8 mation on terms, conditions, and yield of such
9 instruments.
10 "(E) AUTHORITY TO REGULATE.—The Ad-
11 ministrator shall have the authority to regulate
12 brokers and dealers in trust certificates sold
13 pursuant to this section.
14 "(F) BOOK ENTRY PERMITTED.—Nothing
15 in this paragraph shall prohibit the utilization
16 of a book-entry or other electronic form of reg-
17 istration for trust certificates.".

18 **SEC. 220. FORECLOSURE AND LIQUIDATION OF LOANS.**

19 Section 510 of the Small Business Investment Act
20 of 1958 (15 U.S.C. 697g) is amended to read as follows:

21 **"SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.**

22 "(a) DELEGATION OF AUTHORITY.—In accordance
23 with this section, the Administrator shall delegate to any
24 certified development company that meets the eligibility
25 requirements of subsection (b)(1), the authority to fore-

1 close and liquidate, or to otherwise treat in accordance
2 with this section, defaulted loans in its portfolio that are
3 funded with the proceeds of debentures guaranteed by the
4 Administrator pursuant to this title.

5 "(b) ELIGIBILITY FOR DELEGATION.—

6 "(1) REQUIREMENTS.—A certified development
7 company shall be eligible for a delegation of author-
8 ity under subsection (a) if—

9 "(A) the certified development company—

10 "(i) has participated in the loan liq-
11 uidation pilot program established by the
12 Small Business Programs Improvement
13 Act of 1996 (15 U.S.C. 695 note), before
14 the enactment of the Small Business Fi-
15 nancing and Investment Act of 2009;

16 "(ii) is an accredited or premier cer-
17 tified development company; or

18 "(iii) during the 3 fiscal years imme-
19 diately prior to seeking such a delegation,
20 has made an average of not less than 10
21 loans per year that are funded with the
22 proceeds of debentures guaranteed under
23 this title; and

24 "(B) the certified development company—

25 "(i) has one or more employees—

1 "(I) with not less than 2 years of
2 substantive, decisionmaking experi-
3 ence in administering the liquidation
4 and workout of problem loans secured
5 in a manner substantially similar to
6 loans funded with the proceeds of de-
7 bentures guaranteed under this title;
8 and
9 "(II) who have completed a train-
10 ing program on loan liquidation devel-
11 oped by the Administrator in conjunc-
12 tion with a certified development com-
13 pany that meet the requirements of
14 this paragraph; or
15 "(ii) submits to the Administrator
16 documentation demonstrating that the
17 company has contracted with a qualified
18 third party to perform any liquidation ac-
19 tivities and secures the approval of the
20 contract by the Administrator with respect
21 to the qualifications of the contractor and
22 the terms and conditions of liquidation ac-
23 tivities.
24 "(2) CONFIRMATION.—On the request, the Ad-
25 ministrator shall examine the qualifications of any

1 certified development company described in sub-
2 section (a) to determine if such company is eligible
3 for the delegation of authority under this section. If
4 the Administrator determines that a company is not
5 eligible, the Administrator shall provide the com-
6 pany, in writing, with the reasons for such ineligi-
7 bility. The certified development company shall be
8 entitled to request delegated authority and the Ad-
9 ministrator shall review the request only to address
10 whether the certified development company has rec-
11 tified the reasons for the Administrator's original
12 determination of ineligibility.
13 "(c) SCOPE OF DELEGATED AUTHORITY.—
14 "(1) IN GENERAL.—Each certified development
15 company to which the Administrator delegates au-
16 thority under subsection (a) may with respect to any
17 loan described in subsection (a)—
18 "(A) perform all liquidation and fore-
19 closure functions, including the purchase in ac-
20 cordance with this subsection of any other in-
21 debtedness secured by the property securing the
22 loan, in a reasonable and sound manner accord-
23 ing to commercially accepted practices, pursu-
24 ant to a liquidation plan approved in advance
25 by the Administrator under paragraph (2)(A);

1 "(B) litigate any matter relating to the
2 performance of the functions described in sub-
3 paragraph (A), except that the Administrator
4 may—
5 "(i) defend or bring any claim if—
6 "(I) the outcome of the litigation
7 may adversely affect the Administra-
8 tor's management of the program es-
9 tablished under this title; or
10 "(II) the Administrator is enti-
11 tled to legal remedies not available to
12 a certified development company and
13 such remedies will benefit either the
14 Administrator or the certified develop-
15 ment company; and
16 "(ii) oversee the conduct of any such
17 litigation; and
18 "(C) take other appropriate actions to
19 mitigate loan losses in lieu of total liquidation
20 or foreclosures, including the restructuring of a
21 loan in accordance with prudent loan servicing
22 practices and pursuant to a workout plan ap-
23 proved in advance by the Administrator under
24 paragraph (2).
25 "(2) ADMINISTRATOR APPROVAL OF PLANS.—

1 "(A) CERTIFIED DEVELOPMENT COMPANY
2 SUBMISSION OF PLANS.—Before carrying out
3 functions described in paragraph (1)(A) or
4 (1)(C), the certified development company shall
5 submit to the Administrator a proposed liquida-
6 tion plan, any proposal for the Administrator to
7 the purchase of any other indebtedness secured
8 by the property securing a defaulted loan, or a
9 workout plan or any combination thereof.
10 "(B) ADMINISTRATOR APPROVAL PROCE-
11 DURES.—
12 "(i) TIMING.—Not later than 15 busi-
13 ness days after the plans described in sub-
14 paragraph (A) are received by the Admin-
15 istrator, the Administrator shall approve or
16 reject the plan.
17 "(ii) NOTICE OF NO DECISION.—With
18 respect to any plan that cannot be ap-
19 proved or denied within the 15-day period
20 required by clause (i), the Administrator
21 shall within such period provide in accord-
22 ance with subparagraph (E) notice to the
23 company that submitted the plan.
24 "(C) ROUTINE ACTIONS.—In carrying out
25 the functions described in paragraph (1)(A), a

1 certified development company may undertake
2 routine actions not addressed in a liquidation or
3 workout plan without obtaining additional ap-
4 proval from the Administrator.

5 "(D) COMPROMISE OF INDEBTEDNESS.—
6 In carrying out functions described in para-
7 graph (1)(A), a certified development company
8 may—

9 "(i) consider an offer made by an obli-
10 gor to compromise the debt for less than
11 the full amount owing; and

12 "(ii) pursuant to such offer, release
13 any obligor or other party contingently lia-
14 ble, if the company secures the written ap-
15 proval of the Administrator.

16 "(E) CONTENTS OF NOTICE OF NO DECI-
17 SION.—Any notice provided by the Adminis-
18 trator pursuant to subparagraph (B)(ii) shall—

19 "(i) be in writing stating the specific
20 reasons for which the Administrator was
21 unable to act on the request submitted
22 pursuant to subparagraph (A);

23 "(ii) provide an estimate of the addi-
24 tional time needed for the Administrator to
25 reach a decision on the request; and

1 "(iii) specify any additional informa-
2 tion or documentation that the Adminis-
3 trator needs to make a decision but was
4 not provided in the plan submitted by the
5 certified development company.
6 "(3) CONFLICT OF INTEREST.—In carrying out
7 functions described in paragraph (1), a certified de-
8 velopment company shall take no action that would
9 result in an actual or apparent conflict of interest
10 between the company (or any employee of the com-
11 pany) and any third-party lender, associate of a
12 third-party lender, or any other person participating
13 in a liquidation, foreclosure, or loss mitigation ac-
14 tion.
15 "(d) SUSPENSION OR REVOCATION OF AUTHOR-
16 ITY.—
17 "(1) IN GENERAL.—The Administrator may re-
18 voke or suspend a delegation of authority under this
19 section to a certified development company if the
20 Administrator determines that the company—
21 "(A) does not meet the requirements of
22 subsection (b)(1);
23 "(B) violated any applicable law or rule or
24 regulation of the Administrator that in the esti-

1 mation of the Administrator requires revoca-
2 tion; or
3 "(C) fails to comply with any reporting
4 that may be established by the Administrator
5 relating to the establishment of eligibility in
6 subsection (b)(1) or carrying out the functions
7 described in subsection (c)(1).
8 "(2) WRITTEN NOTICE.—The Administrator
9 shall provide in writing detailed reason why the dele-
10 gation of authority was suspended or revoked.
11 "(e) PARTICIPATION IN LIQUIDATION.—
12 "(1) IN GENERAL.—
13 "(A) CONTRACT WITH QUALIFIED THIRD
14 PARTY.—A certified development company
15 which elects not to apply for authority to fore-
16 close and liquidate defaulted loans under this
17 section, or which the Administrator determines
18 to be ineligible for such authority, shall contract
19 with a qualified third party to perform fore-
20 closure and liquidation of defaulted loans in its
21 portfolio.
22 "(B) CONTRACT APPROVAL.—The contract
23 entered into by the certified development com-
24 pany specified in subparagraph (A) shall be
25 contingent upon approval by the Administrator

1 with respect to the qualifications of the con-
2 tractor and the terms and conditions of liquida-
3 tion activities. The Administrator shall not un-
4 reasonably withhold such approval.

5 "(C) NOTIFICATION OF REJECTION.—If
6 the Administrator rejects the contract, the Ad-
7 ministrator shall provide a notice to the cer-
8 tified development company, in writing, explain-
9 ing the reasons for such rejection within ten
10 business days after submission of the contract.

11 "(D) RESUBMITTAL.—The certified devel-
12 opment company shall be permitted to resubmit
13 the contract and the Administrator's review of
14 any such resubmittal shall be limited to
15 insufficiencies described in the notification of
16 rejection.

17 "(E) REGULATIONS.—The Administrator
18 shall promulgate regulations, after notice and
19 opportunity for comment, adopting standards
20 for the approval of qualified third-party con-
21 tractors within 90 days after the date of enact-
22 ment of the Small Business Financing and In-
23 vestment Act of 2009.

24 "(F) FAILURE TO PROMULGATE REGULA-
25 TIONS.—If the Administrator fails to promul-

1 gate such regulations, any contract for liquida-
2 tion entered into by a certified development
3 company under this subsection shall be consid-
4 ered valid for the purposes of this subsection
5 and subsection (f).

6 "(G) EFFECT OF ADMINISTRATOR'S PRO-
7 MULGATION OF REGULATIONS.—If the Adminis-
8 trator promulgates regulations after the dead-
9 line specified in subparagraph (E), those regu-
10 lations shall not have any retroactive applica-
11 tion with respect to contracts that are described
12 in subparagraph (F).

13 "(2) COMMENCEMENT.—This subsection shall
14 not require any certified development company to
15 liquidate defaulted loans until the Administrator im-
16 plements a system to compensate and reimburse cer-
17 tified development companies for liquidation of any
18 defaulted loans.

19 "(f) COMPENSATION AND REIMBURSEMENT.—

20 "(1) REIMBURSEMENT OF EXPENSES.—The
21 Administrator shall reimburse each certified develop-
22 ment company for all expenses paid by such com-
23 pany as part of the foreclosure and liquidation ac-
24 tivities taken to carry out this section, if the ex-
25 penses—

1 "(A) were—

2 "(i) approved in advance by the Ad-
3 ministrator, either specifically in a plan
4 submitted pursuant to subsection (c) or
5 generally, such as, but not limited to, ac-
6 tions approved by the Administrator in
7 regulations or other interpretative
8 issuances; or

9 "(ii) incurred by the development
10 company on an emergency basis without
11 prior approval from the Administrator, if
12 the Administrator determines that the ex-
13 penses were reasonable and appropriate;
14 and

15 "(B) are submitted by the certified devel-
16 opment company to the Administrator not later
17 than 3 years after the date the expense was in-
18 curred or the bill therefore is submitted to the
19 certified development company, whichever is
20 later.

21 "(2) ALTERNATIVE REIMBURSEMENT.—As an
22 alternative to the procedure in paragraph (1), a cer-
23 tified development company may elect to obtain re-
24 imbursement for all such expenses from the proceeds
25 of any collateral provided by the borrower that was

1 liquidated by the certified development company if
2 the expenses comply with the requirements of para-
3 graph (1). Within 6 months of the reimbursement,
4 the certified development company shall provide the
5 Administrator with the same information and docu-
6 mentation it would be required to submit to obtain
7 payment from the Administrator.

8 "(3) REGULATIONS.—The Administrator shall
9 promulgate regulations, after notice and comment to
10 carry out the provisions of paragraphs (1) and (2).
11 If the Administrator does not promulgate such regu-
12 lations within one year, certified development compa-
13 nies shall be authorized, notwithstanding the re-
14 quirements of subsection (e)(2), to liquidate de-
15 faulted loans and such costs and expenses incurred,
16 absent clear and convincing evidence of fraud, shall
17 be deemed to be approved.

18 "(4) COMPENSATION FOR RESULTS.—

19 "(A) DEVELOPMENT.—In regulations pro-
20 mulgated pursuant to paragraph (3), the Ad-
21 ministrator also shall develop a schedule of
22 compensation that provides monetary incentives
23 for certified development companies in order to
24 increase recoveries on defaulted loans.

25 "(B) CRITERIA.—The schedule shall—

1 "(i) be based on a percentage of the
2 net amount recovered, but shall not exceed
3 a maximum amount; and
4 "(ii) not apply to any foreclosure
5 which is conducted under a contract be-
6 tween a certified development company and
7 a qualified third party to perform the fore-
8 closure and liquidation.
9 "(C) PAYMENT.—The Administrator shall
10 transmit the compensation provided herein to
11 the development company from the proceeds of
12 liquidated collateral, unless the Administrator
13 utilizes another source for funds, within 30
14 days from the date when the liquidation case
15 has been closed and documentation received.".

16 **SEC. 221. REPORTS AND REGULATIONS.**

17 Title V of the Small Business Investment Act of 1958
18 (15 U.S.C. 695 et seq.) is amended by adding at the end
19 the following:

20 **"SEC. 511. REPORTS.**

21 "(a) PREMIER CERTIFIED DEVELOPMENT COMPA-
22 NIES.—The Administrator shall report annually to the
23 Committee on Small Business of the House of Representa-
24 tives and the Committee on Small Business and Entrepre-

1 neurship of the Senate on the implementation of section
2 504. Each report shall include—
3 "(1) the number of premier certified develop-
4 ment companies;
5 "(2) the debenture volume of each premier cer-
6 tified development company;
7 "(3) a comparison of the loss rate for premier
8 certified development companies to the loss rate for
9 accredited or certified development companies; and
10 "(4) such other information as the Adminis-
11 trator deems appropriate.
12 "(b) REPORTS ON LIQUIDATION AND FORE-
13 CLOSURES.—
14 "(1) IN GENERAL.—Based on information pro-
15 vided by certified development companies and the
16 Administrator, the Administrator shall submit annu-
17 ally to the Committee on Small Business and Entre-
18 preneurship of the Senate and the Committee on
19 Small Business of the House of Representatives a
20 report on the results of delegation of authority under
21 section 510.
22 "(2) CONTENTS.—Each report submitted under
23 paragraph (1) shall include the following informa-
24 tion:

1 "(A) With respect to each loan foreclosed
2 or liquidated by a certified development com-
3 pany, or for which losses were otherwise miti-
4 gated by pursuant to a workout plan—
5 "(i) the total cost of the project fi-
6 nanced with the loan;
7 "(ii) the total original dollar amount
8 guaranteed by the Administration;
9 "(iii) the total dollar amount of the
10 loan at the time of liquidation, foreclosure,
11 or mitigation of loss;
12 "(iv) the total dollar losses resulting
13 from the liquidation, foreclosure, or mitiga-
14 tion of loss; and
15 "(v) the total recoveries resulting
16 from the liquidation, foreclosure, or mitiga-
17 tion of loss, both as a percentage of the
18 amount guaranteed and the total cost of
19 the project financed.
20 "(B) With respect to each certified devel-
21 opment company to which authority is dele-
22 gated under section 510, the totals of each of
23 the amounts described in clauses (i) through (v)
24 of subparagraph (A).

1 "(C) With respect to each certified devel-
2 opment company that contracts with a qualified
3 third-party contractor pursuant to section
4 510(e), the total of each of the amounts de-
5 scribed in clauses (i) through (v) of subpara-
6 graph (A).
7 "(D) With respect to all loans subject to
8 foreclosure, liquidation, or mitigation under sec-
9 tion 510, the totals of each of the amounts de-
10 scribed in clauses (i) through (v) of subpara-
11 graph (A).
12 "(E) A comparison between—
13 "(i) the information provided under
14 subparagraph (D) with respect to the 12-
15 month period preceding the date on which
16 the report is submitted; and
17 "(ii) the same information with re-
18 spect to loans foreclosed and liquidated, or
19 otherwise treated, by the Administrator
20 during the same period.
21 "(F) The number of times that the Admin-
22 istrator has failed to approve or reject a liq-
23 uidation plan, workout plan, request to pur-
24 chase indebtedness, or failed to approve a third-
25 party contractor under section 510, including

1 specific information regarding the reasons for
2 the Administrator's failure and any delays that
3 resulted.
4 "(c) REPORTS ON COMBINATION FINANCING.—
5 "(1) REPORTING REQUIREMENT.—Not later
6 than 90 days after the date of enactment of the
7 Small Business Financing and Investment Act of
8 2009, and annually thereafter, the Administrator
9 shall submit a report to the Committee on Small
10 Business and Entrepreneurship of the Senate and
11 the Committee on Small Business of the House of
12 Representatives that—
13 "(A) includes the number of small business
14 concerns that have financing under both section
15 7(a) of the Small Business Act (15 U.S.C.
16 636(a)) and title V of the Small Business In-
17 vestment Act of 1958 (15 U.S.C. 695 et seq.)
18 during the year before the year of that report;
19 and
20 "(B) describes the total amount and gen-
21 eral performance of the financing described in
22 subparagraph (A).
23 "(d) REPORT ON OTHER ECONOMIC DEVELOPMENT
24 ACTIVITY.—The Administrator shall compile and submit
25 to the Committee on Small Business of the House of Rep-

1 resentatives and the Committee on Small Business and
2 Entrepreneurship of the Senate on an annual basis, com-
3 mencing in the year that the Small Business Financing
4 and Investment Act of 2009 is enacted, a report that de-
5 scribes the economic and community development activi-
6 ties, other than loan making under this title, of each cer-
7 tified development company during the prior fiscal year.
8 The Administrator may contract with another party, in-
9 cluding non-governmental entities, to collect information
10 or otherwise assist in the preparation of the report re-
11 quired by this subsection.

12 **"SEC. 512. PROMULGATION OF REGULATIONS UNDER THIS**
13 **TITLE.**

14 "(a) DEADLINES FOR IMPLEMENTING REGULA-
15 TIONS.—Except as expressly provided elsewhere in the
16 Small Business Financing and Investment Act of 2009,
17 the Administrator shall promulgate regulations under this
18 title, after providing notice and the opportunity for com-
19 ment, within 180 days after the date of enactment of that
20 Act.

21 "(b) NOTICE AND COMMENT REQUIREMENTS IN
22 GENERAL.—Except as otherwise provided elsewhere in
23 this title, the Administrator shall provide, after the date
24 of enactment of the Small Business Financing and Invest-
25 ment Act of 2009, notice of any proposed change to a reg-

1 ulation implementing this title (whether in existence on
2 the date of enactment of the Small Business Financing
3 and Investment Act of 2009 or subsequently adopted),
4 publish such notification in the Federal Register, and pro-
5 vide a comment period of not less than 60 days.".

6 **SEC. 222. PROGRAM NAME.**

7 Title V of the Small Business Investment Act of 1958
8 (15 U.S.C. 695 et seq.), as amended by this Act, is further
9 amended by adding at the end the following:

10 **"SEC. 513 PROGRAM NAME.**

11 "(a) IN GENERAL.—The program created by this
12 title shall be referred to as the CDC Economic Develop-
13 ment Loan Program.

14 "(b) MODIFICATION OF MATERIALS USED.—Not
15 later than 60 days after the date of enactment of the
16 Small Business Financing and Investment Act of 2009,
17 the Administrator shall modify all documents and websites
18 to conform to the name change made by this section.".

19 **Subtitle C—Miscellaneous**

20 **SEC. 231. REPORT ON STANDARD OPERATING PROCE-**
21 **DURES.**

22 (a) REPORT.—The Administrator of the Small Busi-
23 ness Administration shall submit to the Committee on
24 Small Business of the House of Representatives and the
25 Committee on Small Business and Entrepreneurship of

1 the Senate a report within 180 days after enactment of
2 this Act identifying each Standard Operating Procedure
3 issued after January 1, 1996, that relates to the operation
4 of a development company (in any manner) under title V
5 of the Small Business Investment Act of 1958, that is still
6 in effect on the date of enactment of this Act, and the
7 regulation codified in title 13 of the Code of Federal Regu-
8 lations that authorizes the issuance of the Standard Oper-
9 ating Procedure and separately identifies the regulation
10 that the Standard Operating Procedure purports to inter-
11 pret.

12 (b) INAPPLICABILITY.—If the Administrator fails to
13 complete the report by the time specified in subsection (a),
14 the Administrator shall, unless there is clear and con-
15 vincing evidence of fraud, honor the terms and conditions
16 of any debenture to the entity that issued the debenture
17 pursuant to title V of the Small Business Investment Act
18 of 1958 without regard to whether the entity complied
19 with any of the Standard Operating Procedures described
20 in subsection (a) until such time as the Administrator sub-
21 mits the report required under subsection (a).

22 (c) DEFINITION.—For purposes of this section, the
23 term "Standard Operating Procedure" has the meaning
24 given that term in section 120.10 of title 13, Code of Fed-

1 eral Regulations, as in effect on January 1, 2009, and
2 includes any reference to the acronym "SOP".

3 **SEC. 232. ALTERNATIVE SIZE STANDARD.**

4 (a) REVIEW AND STUDY.—

5 (1) IN GENERAL.—The Administrator of the
6 Small Business Administration shall study and re-
7 view the optional size standard set forth in section
8 121.301(b) of title 13, Code of Federal Regulations,
9 as in effect on January 1, 2009, for eligibility of a
10 small business concern for financing under title V of
11 the Small Business Investment Act of 1958.

12 (2) CONTENTS.—The review shall analyze
13 whether the alternative size standard includes the
14 business concerns defined in section 3(a)(1) of the
15 Small Business Act and what, if any, regulatory
16 changes are needed in the alternative size standard.

17 (3) SUBMISSION TO CONGRESS.—The Adminis-
18 trator shall submit its study and conclusions within
19 180 days after the date of enactment of the Small
20 Business Financing and Investment Act of 2009 to
21 the Committee on Small Business and Entrepre-
22 neurship of the Senate and the Committee on Small
23 Business of the House of Representatives.

24 (b) ISSUANCE OF REGULATIONS.—Any changes in
25 the optional size standard described in subsection (a)(1)

1 shall be promulgated within 180 days of the submission
2 of the report to committees referred to in paragraph (3)
3 of subsection (a).

4 (c) INTERIM ALTERNATIVE SIZE STANDARD.—Until
5 the Administrator promulgates regulations either re-
6 adopting the size standard referred to in subsection (a)(1)
7 or adopts a new alternative size standard, the alternative
8 size standard shall be a maximum tangible net worth of
9 not more than $15,000,000 and an average net income
10 after the payment of Federal taxes (but excluding any car-
11 ryover losses) for the preceding two fiscal years not more
12 than $5,000,000.

13 TITLE III—MICROLENDING 14 EXPANSION

15 SEC. 301. MICROLOAN CREDIT BUILDING INITIATIVE.

16 Section 7(m) of the Small Business Act (15 U.S.C.
17 636(m)) is amended by adding at the end the following:

18 "(14) CREDIT REPORTING INFORMATION.—The
19 Administrator shall establish a process, for use by
20 an intermediary making a loan to a borrower under
21 this subsection, under which the intermediary shall
22 provide to the major credit reporting agencies the in-
23 formation about the borrower, both positive and neg-
24 ative, that is relevant to credit reporting, such as the
25 payment activity of the borrower on the loan. Such

1 process shall allow an intermediary the option of
2 providing information to the major credit reporting
3 agencies through the Administration or independ-
4 ently.".

5 **SEC. 302. FLEXIBLE CREDIT TERMS.**

6 Section 7(m) of the Small Business Act (15 U.S.C.
7 636(m)), as amended by this Act, is further amended—
8 (1) in paragraph (1)(B)(i) by striking "short-
9 term,";
10 (2) in paragraph (6)(A) by striking "short-
11 term,"; and
12 (3) in paragraph (11)(B) by striking "short-
13 term,".

14 **SEC. 303. INCREASED PROGRAM PARTICIPATION.**

15 Section 7(m)(2) of the Small Business Act (15
16 U.S.C. 636(m)(2)) is amended—
17 (1) in subparagraph (A) by striking "paragraph
18 (10)" and inserting "paragraph (11)"; and
19 (2) by amending subparagraph (B) to read as
20 follows:
21 "(B) has—
22 "(i) at least—
23 "(I) 1 year of experience making
24 microloans to startup, newly estab-

1 lished, or growing small business con-
2 cerns; or
3 "(II) 1 full-time employee who
4 has not less than 3 years of experi-
5 ence making microloans to startup,
6 newly established, or growing small
7 business concerns; and
8 "(ii) at least—
9 "(I) 1 year of experience pro-
10 viding, as an integral part of its
11 microloan program, intensive mar-
12 keting, management, and technical as-
13 sistance to its borrowers; or
14 "(II) 1 full-time employee who
15 has not less than 1 year of experience
16 providing intensive marketing, man-
17 agement, and technical assistance to
18 borrowers.".

19 **SEC. 304. INCREASED LIMIT ON INTERMEDIARY BOR-**
20 **ROWING.**

21 Section 7(m)(3)(C) of the Small Business Act (15
22 U.S.C. 636(m)(3)(C)) is amended—
23 (1) by striking "$750,000" and inserting
24 "$1,000,000";

1 (2) by striking "$3,500,000" and inserting
2 "$7,000,000"; and
3 (3) by adding at the end the following: "The
4 Administrator may treat the amount of $7,000,000
5 in this subparagraph as if such amount is
6 $10,000,000 if the Administrator determines, with
7 respect to an intermediary, that such treatment is
8 appropriate.".

9 **SEC. 305. EXPANDED BORROWER EDUCATION ASSISTANCE.**

10 Section 7(m)(4)(E) of the Small Business Act (15
11 U.S.C. 636(m)(4)(E)) is amended—
12 (1) in clause (i) by striking "25 percent" and
13 inserting "35 percent"; and
14 (2) in clause (ii) by striking "25 percent" and
15 inserting "35 percent".

16 **SEC. 306. INTEREST RATES AND LOAN SIZE.**

17 Section 7(m) of the Small Business Act (15 U.S.C.
18 636(m)), as amended by this Act, is further amended—
19 (1) in paragraph (3)(F)(iii) by striking
20 "$7,500" and inserting "$10,000";
21 (2) in paragraph (6)(C)(i) by striking "$7,500"
22 and inserting "$10,000"; and
23 (3) in paragraph (6)(C)(ii) by striking
24 "$7,500" and inserting "$10,000".

1 **SEC. 307. REPORTING REQUIREMENT.**

2 Section 7(m) of the Small Business Act (15 U.S.C.
3 636(m)), as amended by this Act, is further amended by
4 adding at the end the following:

5 "(15) REPORTING REQUIREMENT.—Not later
6 than 90 days after the end of each fiscal year, the
7 Administrator shall submit to the Committee on
8 Small Business of the House of Representatives and
9 the Committee on Small Business and Entrepre-
10 neurship of the Senate a report that includes, with
11 respect to such fiscal year of the microloan program,
12 the following:

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

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

20 "(C) A description of the contributions
21 from non-Federal sources of each such inter-
22 mediary.

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

1 "(i) Women entrepreneurs and busi-
2 ness owners.
3 "(ii) Low-income entrepreneurs and
4 business owners.
5 "(iii) Veteran entrepreneurs and busi-
6 ness owners.
7 "(iv) Disabled entrepreneurs and busi-
8 ness owners.
9 "(v) Minority entrepreneurs and busi-
10 ness owners.
11 "(E) A description of the marketing, man-
12 agement, and technical assistance provided by
13 each such intermediary to all borrowers and to
14 each of the following:
15 "(i) Women entrepreneurs and busi-
16 ness owners.
17 "(ii) Low-income entrepreneurs and
18 business owners.
19 "(iii) Veteran entrepreneurs and busi-
20 ness owners.
21 "(iv) Disabled entrepreneurs and busi-
22 ness owners.
23 "(v) Minority entrepreneurs and busi-
24 ness 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.".

SEC. 308. SURPLUS INTEREST RATE SUBSIDY FOR BUSINESSES.

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)), as amended by this Act, is further amended by adding at the end the following:

"(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

1 expended for activities under this subsection
2 other than activities under this paragraph.".

3 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

4 Section 20 of the Small Business Act (15 U.S.C. 631
5 note), as amended by this Act, is further amended by in-
6 serting after subsection (g) the following:

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

9 "(1) PROGRAM LEVELS.—For the programs au-
10 thorized by this Act, the Administration is author-
11 ized to make during each of fiscal years 2010 and
12 2011—

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

15 "(B) $110,000,000 in direct loans, as pro-
16 vided in section 7(m).

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

TITLE IV—SMALL BUSINESS INVESTMENT COMPANY MODERNIZATION

SEC. 401. INCREASED INVESTMENT FROM STATES.

Section 103(13)(C) of the Small Business Investment Act of 1958 (15 U.S.C. 662(13)(C)) is amended by striking "33 percent" and inserting "45 percent".

SEC. 402. EXPEDITED LICENSING FOR EXPERIENCED APPLICANTS.

Section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681) is amended by inserting after subsection (c) the following new subsection:

"(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

1 business investment company that has been li-
2 censed under this Act.
3 "(B) The licensed small business invest-
4 ment company specified under subparagraph
5 (A) has operated under such license for at least
6 3 years prior to the receipt of the request speci-
7 fied in this paragraph.
8 "(C) The licensed small business invest-
9 ment company specified under subparagraph
10 (A)—
11 "(i) either has invested at least 70
12 percent of its private capital and drawn at
13 least 50 percent of its projected leverage at
14 the time of the receipt of the request speci-
15 fied in this paragraph or reserved for in-
16 vestment and expenses or some combina-
17 tion of both at least 70 percent of its pri-
18 vate capital in the one-year period prior to
19 the date on which the application referred
20 to in this paragraph was received by the
21 Administrator;
22 "(ii) has maintained 6 consecutive
23 quarters of profitable net investment in-
24 come; and

1 "(iii) has made at least 3 exits from
2 investments in small businesses that have
3 realized profits from those respective in-
4 vestments.
5 "(D) The applicant submits to the Admin-
6 istrator, in writing, an application consisting of
7 all of the following:
8 "(i) A certification, in the form pre-
9 scribed by the Administrator, that such ap-
10 plicant satisfies the requirements of this
11 subsection and that all information con-
12 tained in the application is true and com-
13 plete.
14 "(ii) A copy of the organizational doc-
15 uments of the applicant.
16 "(iii) A copy of the operating plan of
17 the applicant demonstrating that at least
18 50 percent of the amount of the planned
19 investments of the applicant will be in the
20 same or substantially similar investment
21 stage and use the same or substantially
22 similar type of investment instruments as
23 the investments of the licensed small busi-
24 ness investment company specified under
25 subparagraph (A).

1 "(iv) A certification, in a form pre-
2 scribed by the Administrator, that the ap-
3 plicant satisfies the requirements of sub-
4 sections (a) and (c) of section 302 of this
5 Act.
6 "(E) The applicant is in good standing as
7 set forth in paragraph (2).
8 "(F) The applicant pays all fees prescribed
9 by the Administrator under subsection (e).
10 "(2) GOOD STANDING.—For purposes of this
11 subsection, an applicant is in good standing if—
12 "(A) a licensed leveraged debentured or
13 non-leveraged small business investment com-
14 pany specified under paragraph (1)(A) is ac-
15 tively operating under this Act on the date of
16 the initial receipt of the application by the Ad-
17 ministrator to which this subsection applies;
18 "(B) no principal manager of the applicant
19 has been found liable in a civil action for fraud
20 if the Administrator makes a reasonable deter-
21 mination based on evidence in the agency
22 record that such liability has a material adverse
23 effect on the ability of the applicant to perform
24 obligations required by a license issued pursu-
25 ant to this Act; and

1 "(C) no principal manager is under inves-
2 tigation by a governmental agency or authority
3 for, is under indictment for, or has been con-
4 victed of a felony for a violation of Federal or
5 State securities laws, fraud, or another criminal
6 violation if such investigation, indictment, or
7 conviction has a material adverse effect on the
8 ability of the applicant to perform obligations
9 under a license issued under this Act.
10 "(3) LIMITATION.—
11 "(A) IN GENERAL.—The Administrator
12 may remove an application from the approval
13 process under this subsection if the Adminis-
14 trator determines based on evidence in the
15 agency record that the approval of the license
16 would present an unacceptable risk to the Fed-
17 eral Government.
18 "(B) IN WRITING.—Such determination
19 shall be made in writing and provided to the
20 applicant no later than 10 calendar days after
21 such determination is made. Failure to provide
22 this determination to the applicant shall be
23 deemed to be a permanent waiver of the Admin-
24 istrator's authority to remove an application
25 pursuant to this subsection.

1 "(C) NON-DELEGABILITY.—The Adminis-
2 trator may rely on agency personnel to collect
3 data or other material relevant to establishing
4 a record, but the decision to remove the appli-
5 cation may not be delegated by the Adminis-
6 trator to any subordinate personnel in the agen-
7 cy.
8 "(4) NOTICE AND OPPORTUNITY TO CURE NON-
9 CONFORMANCE.—
10 "(A) NOTICE OF NON-CONFORMANCE.—
11 Except for a determination made pursuant to
12 paragraph (3), the Administrator shall provide
13 an applicant described in paragraph (1) within
14 60 days after receipt of the application a writ-
15 ten notice and description of any nonconform-
16 ance with any requirement of this subsection
17 based on evidence in the agency record.
18 "(B) OPPORTUNITY TO CURE.—The appli-
19 cant shall have 30 days following the receipt of
20 notice of nonconformance or the receipt of re-
21 moval as set forth in paragraph (3) to cure
22 such nonconformance.
23 "(C) FAILURE TO PROVIDE NOTICE.—Fail-
24 ure to provide the notice within the time limit
25 set forth in subparagraph (A) shall be deemed

1 to be acceptance by the Administrator of the
2 applicant's conformance with the requirements
3 of this subsection.
4 "(5) BACKGROUND REVIEWS.—The Adminis-
5 trator shall ensure that a timely background check
6 of the principal managers of each applicant is com-
7 pleted with respect to paragraphs (2)(B) and (2)(C).
8 "(6) FEES.—The Administrator may charge an
9 applicant additional fees for carrying out the back-
10 ground reviews mandated by paragraph (5). Such
11 fees shall not exceed $10,000.
12 "(7) EFFECT OF NON-QUALIFICATION.—The
13 failure of an applicant to qualify for expedited licen-
14 sure under this subsection shall have no effect on an
15 existing license or the ability for the applicant or
16 any of its individual managers to apply for or receive
17 a license to operate a small business investment
18 company under the procedures established elsewhere
19 in this Act or its implementing regulations.
20 "(8) REGULATIONS.—The Administrator shall
21 develop forms and promulgate regulations to imple-
22 ment this subsection after providing an opportunity
23 for notice and comment. Regulations promulgated
24 pursuant to this paragraph shall be published in the
25 Code of Federal Regulations.".

1 **SEC. 403. REVISED LEVERAGE LIMITATIONS FOR SUCCESS-**
2 **FUL SBICS.**

3 (a) MAXIMUM LEVERAGE.—Section 303(b)(2) of the
4 Small Business Investment Act of 1958 (15 U.S.C.
5 683(b)(2)) is amended by striking so much of paragraph
6 (2) as precedes subparagraph (C) and inserting the fol-
7 lowing:

8 "(2) MAXIMUM LEVERAGE.—

9 "(A) IN GENERAL.—(i) The maximum
10 amount of outstanding leverage made available
11 to any one company licensed under section
12 301(c) of this Act may not exceed the lesser
13 of—

14 "(I) 300 percent of such com-
15 pany's private capital; or

16 "(II) $150,000,000.

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

24 "(I) The first one-third of private cap-
25 ital to 300 percent.

1 "(II) The second one-third of private
2 capital to 200 percent.
3 "(III) The last third of private capital
4 to 100 percent.
5 "(iii) Notwithstanding clause (i), in the
6 case of any company operating as a business
7 development company (as such term is defined
8 under section 2(a)(48) of the Investment Com-
9 pany Act of 1940) or a majority-owned sub-
10 sidiary of such a company that is in good
11 standing without the imposition of additional
12 regulatory requirements, the maximum amount
13 of outstanding leverage made available to such
14 company shall be $250,000,000.
15 "(B) MULTIPLE LICENSEES UNDER COM-
16 MON CONTROL.—The maximum amount of out-
17 standing leverage made available to two or more
18 debenture companies licensed under section
19 301(c) of this Act that are commonly controlled
20 (as determined by the Administrator) and not
21 under capital impairment may not exceed
22 $350,000,000.".
23 (b) REGULATIONS.—Section 303(b)(2) of the Small
24 Business Investment Act of 1958 (15 U.S.C. 683(b)(2)),

1 as amended by this Act, is further amended by adding
2 at the end the following:

3 "(E) REGULATIONS.—The Administrator
4 shall promulgate regulations, after notice and
5 opportunity for comment, establishing quantifi-
6 able objective criteria under which a licensee's
7 private capital in its entirety may be leveraged
8 up to 300 percent. Such regulations shall be
9 published in the Code of Federal Regulations.".

10 (c) INVESTMENTS IN LOW-INCOME GEOGRAPHIC
11 AREAS.—Section 303(b)(2)(C)(ii) of the Small Business
12 Investment Act of 1958 (15 U.S.C. 683(b)(2)(C)(ii)) is
13 amended by striking "$250,000,000" in subclause (II)
14 and inserting "$400,000,000".

15 **SEC. 404. CONSISTENCY FOR COST CONTROL.**

16 Section 305(c) of the Small Business Investment Act
17 of 1958 (15 U.S.C. 685(c)) is amended by adding at the
18 end the following:

19 "In addition to the foregoing, with respect to a loan
20 made, or debt with equity features acquired, under this
21 section, the minimum coupon rate of interest (cost of
22 money ceiling) imposed by the Administrator shall not be
23 less than 19 percent per annum for a loan or a debt secu-
24 rity, except that nothing herein shall alter or affect provi-
25 sions permitting higher coupon rates of interest (cost of

1 money ceilings) and a company may charge up to an addi-
2 tional 7 percent more than the interest rate set forth in
3 the loan or debt security in the event of a default. For
4 purposes of this subsection a default means the occurrence
5 of any of the following:

6 "(1) Failure to pay an amount when due.

7 "(2) Failure to provide in a timely manner ma-
8 terial information required under the applicable fi-
9 nancing documents.

10 "(3) Failure to observe any material term, cov-
11 enant, or other agreement contained in the applica-
12 ble financing documents.

13 "(4) A representation, warranty, certification,
14 or statement of fact made by or on behalf of a bor-
15 rower in any applicable financing document or in
16 any document delivered in connection therewith, that
17 was materially incorrect or misleading when made.

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

20 **SEC. 405. INVESTMENT IN VETERAN-OWNED SMALL BUSI-**
21 **NESSES.**

22 Section 303(b)(2)(C) of the Small Business Invest-
23 ment Act of 1958 (15 U.S.C. 683(b)(2)(C)) is amended
24 as follows:

1 (1) In the heading, by inserting after "AREAS"
2 the following: "AND VETERANS".
3 (2) In clause (i), by inserting after "351)" the
4 following: "or in a small business concern owned and
5 controlled by veterans (as such term is defined in
6 section 3(q)(3) of the Small Business Act)".
7 (3) In clause (iii), by inserting after "351)" the
8 following: "or in small business concerns owned and
9 controlled by veterans (as such term is defined in
10 section 3(q)(3) of the Small Business Act)".

11 **SEC. 406. LIMITATIONS ON PREPAYMENT.**

12 Section 305 of the Small Business Investment Act
13 of 1958 (15 U.S.C. 685) is amended by adding at the end
14 the following:
15 "(g) A company may require a small business concern
16 to accept reasonable and customary minimum prepayment
17 amounts, terms, and notice requirements.
18 "(h) The private capital of a licensee may include
19 funds transferred to an account of the Telecommuni-
20 cations Development Fund created pursuant to section
21 714 of the Communications Act of 1934 (47 U.S.C. 614)
22 and which are described in section 309(j)(8)(C)(iii) of the
23 Communications Act of 1934 (47 U.S.C.
24 309(j)(8)(C)(iii)).

1 "(i) The authorization to make loans under sub-
2 section (a) includes the authority to engage in venture
3 leasing, equipment leasing, real estate sale leasebacks, and
4 similar arrangements with small business concerns, so
5 long as such arrangements have an economic purpose
6 similar to traditional loans. Any transaction covered by
7 this subsection involving real property shall require the oc-
8 cupancy of at least 50 percent of the real property by the
9 small business concern.".

10 **SEC. 407. INVESTMENT WITH CERTAIN PASSIVE ENTITIES.**

11 Part A of title III of the Small Business Investment
12 Act of 1958 (15 U.S.C. 681 et seq.) is amended by adding
13 at the end the following:

14 **"SEC. 321. INVESTMENT WITH CERTAIN PASSIVE ENTITIES.**

15 "A licensee may provide financing to a passive busi-
16 ness as defined under section 107.720(b)(1) of title 13,
17 Code of Federal Regulations, as in effect on January 1,
18 2009, which is a corporation or limited liability company
19 wholly-owned by the licensee and the sole purpose of which
20 is to provide financing by the licensee to such concerns
21 would cause investors in the licensee to incur with respect
22 to regulated investment companies, income not qualifying
23 under section 851(b)(2)(A) of the Internal Revenue Code
24 of 1986. Nothing in this section shall affect the validity

1 of regulations permitting financings of passive businesses
2 previously duly promulgated by the Administrator.".

3 **SEC. 408. INVESTMENT IN SMALLER ENTERPRISES.**

4 Section 303(d) of the Small Business Investment Act
5 of 1958 (15 U.S.C. 683(d)) is amended by adding at the
6 end the following: "A licensee shall not be required to
7 achieve any percentage of such financings (at cost) which
8 is higher than 25 percent which may result from the appli-
9 cation of prior statutory or regulatory requirements to all
10 or any portion of the licensee's portfolio."

11 **SEC. 409. CAPITAL IMPAIRMENT.**

12 Section 303(e) of the Small Business Investment Act
13 of 1958 (15 U.S.C. 683(e)) is amended by adding at the
14 end the following:
15 "A licensee with Earmarked Assets (as that term is de-
16 fined by the Administrator) will not be in capital impair-
17 ment during the first 72 months after its date of licensure,
18 if its impairment does not exceed 85 percent.".

19 **SEC. 410. TANGIBLE NET WORTH.**

20 Section 103 of the Small Business Investment Act
21 of 1958 (15 U.S.C. 662), as amended by this Act, is fur-
22 ther amended by striking "and" at the end of paragraph
23 (23), by striking the period at the end of paragraph (24)
24 and inserting "; and", and by adding at the end the fol-
25 lowing:

1 "(25) for purposes of the terms 'small-business
2 concern' in paragraph (5) and 'smaller enterprise' in
3 paragraph (12), tangible net worth shall, to the ex-
4 tent used, mean the total net worth of the small
5 business, in accordance with General Accepted Ac-
6 counting Principles, minus all intangibles in accord-
7 ance with General Accepted Accounting Principles.".

8 **SEC. 411. DEVELOPMENT OF AGENCY RECORD.**

9 Part A of title III of the Small Business Investment
10 Act of 1958 (15 U.S.C. 681 et seq.), as amended by this
11 Act, is further amended by adding at the end the fol-
12 lowing:

13 **"SEC. 322. AGENCY RECORD FOR LICENSING OF SMALL**
14 **BUSINESS INVESTMENT COMPANIES.**

15 "(a) RECORD.—The Associate Administrator for In-
16 vestment shall establish an agency record of evidence re-
17 ferring or relating to each application for a license to be-
18 come a small business investment company.

19 "(b) WRITTEN NOTIFICATION.—The Administrator
20 shall provide a written explanation of any denial of a li-
21 cense application based upon evidence in the agency
22 record. Absent an order by a Federal or State court of
23 general jurisdiction, access to applications and the agency
24 record shall be limited to the applicant and to the Admin-
25 istrator and subordinate personnel of the Administrator.".

1 **SEC. 412. PROGRAM LEVELS.**

2 Section 20 of the Small Business Act (15 U.S.C. 631
3 note), as amended by this Act, is further amended by in-
4 serting after subsection (h) the following:

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

7 "(1) PROGRAM LEVELS 2010.—For fiscal year
8 2010, in carrying out the program authorized by
9 part A of title III of the Small Business Investment
10 Act of 1958, the Administrator is authorized to
11 make $5,000,000,000 in guarantees of debentures.

12 "(2) PROGRAM LEVELS 2011.—For fiscal year
13 2011, in carrying out the program authorized by
14 part A of title III of the Small Business Investment
15 Act of 1958, the Administrator is authorized to
16 make $5,5000,000,000 in guarantees of deben-
17 tures.".

TITLE V—INVESTMENT IN SMALL MANUFACTURERS AND RENEWABLE ENERGY SMALL BUSINESSES

Subtitle A—Enhanced New Markets Venture Capital Program

SEC. 501. EXPANSION OF NEW MARKETS VENTURE CAPITAL PROGRAM.

(a) ADMINISTRATION PARTICIPATION REQUIRED.—Section 353 of the Small Business Investment Act of 1958 (15 U.S.C. 689b) is amended by striking "under which the Administrator may" and inserting "under which the Administrator shall".

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Administrator of the Small Business Administration shall submit to Congress a report describing any expansion of the New Markets Venture Capital Program as a result of this section.

SEC. 502. IMPROVED NATIONWIDE DISTRIBUTION.

Section 354 of the Small Business Investment Act of 1958 (15 U.S.C. 689c) is amended by adding at the end the following:

"(f) GEOGRAPHIC EXPANSION.—From among companies submitting applications under subsection (b), the

1 Administrator shall consider the selection criteria and pro-
2 motion of nationwide distribution under subsection (c) and
3 shall, to the extent practicable, approve at least one com-
4 pany from each geographic region of the Small Business
5 Administration.".

6 **SEC. 503. INCREASED INVESTMENT IN SMALL BUSINESS**
7 **CONCERNS ENGAGED PRIMARILY IN MANU-**
8 **FACTURING.**

9 (a) DEVELOPMENTAL VENTURE CAPITAL AND PAR-
10 TICIPATION AGREEMENTS.—Section 351 of the Small
11 Business Investment Act of 1958 (15 U.S.C. 689) is
12 amended—

13 (1) in paragraph (1) by inserting after "geo-
14 graphic areas" the following: "or encouraging the
15 growth or continuation of small business concerns
16 located in low-income geographic areas and engaged
17 primarily in manufacturing"; and

18 (2) in paragraph (6)(B) by inserting after "geo-
19 graphic areas" the following: "or in small business
20 concerns located in low-income geographic areas at
21 least 80 percent of which are engaged primarily in
22 manufacturing".

23 (b) PURPOSES.—Section 352(2) of the Small Busi-
24 ness Investment Act of 1958 (15 U.S.C. 689a(2)) is
25 amended—

1 (1) in the matter preceding subparagraph (A)
2 by inserting after "geographic areas" the following:
3 "and small business concerns located in low-income
4 geographic areas and engaged primarily in manufac-
5 turing";
6 (2) in subparagraph (B) by inserting after "ge-
7 ographic areas" the following: "or in small business
8 concerns located in low-income geographic areas and
9 engaged primarily in manufacturing"; and
10 (3) in subparagraph (C) by inserting after
11 "smaller enterprises" the following: "and small busi-
12 ness concerns".
13 (c) ELIGIBILITY, APPLICATIONS, AND REQUIRE-
14 MENTS FOR FINAL APPROVAL.—Section 354 of the Small
15 Business Investment Act of 1958 (15 U.S.C. 689c), as
16 amended by this Act, is further amended—
17 (1) in subsection (a)(3) by inserting after "geo-
18 graphic areas" the following: "or investing in small
19 business concerns located in low-income geographic
20 areas and engaged primarily in manufacturing";
21 (2) in subsection (b)—
22 (A) in paragraph (1) by inserting after
23 "geographic areas" the following: "or in small
24 business concerns located in low-income geo-

1 graphic areas and engaged primarily in manu-
2 facturing"; and
3 (B) in paragraph (4) by inserting after
4 "smaller enterprises" the following: "or small
5 business concerns"; and
6 (3) in subsection (d)—
7 (A) in paragraph (1)—
8 (i) by striking "Each" and inserting
9 the following:
10 "(A) IN GENERAL.—Except as provided in
11 subparagraph (B), each"; and
12 (ii) by adding at the end the fol-
13 lowing:
14 "(B) SMALL BUSINESS CONCERNS EN-
15 GAGED PRIMARILY IN MANUFACTURING.—Each
16 conditionally approved company engaged pri-
17 marily in development of and investment in
18 small business concerns located in low-income
19 geographic areas and engaged primarily in
20 manufacturing shall raise not less than
21 $3,000,000 of private capital or binding capital
22 commitments from one or more investors (other
23 than agencies or departments of the Federal
24 Government) who met criteria established by
25 the Administrator."; and

1 (B) in paragraph (2)(A) by inserting after
2 "smaller enterprises" the following: "or small
3 business concerns".
4 (d) OPERATIONAL ASSISTANCE GRANTS.—Section
5 358 of the Small Business Investment Act of 1958 (15
6 U.S.C. 689g) is amended—
7 (1) in subsection (a)(1) by inserting after
8 "smaller enterprises" the following: "and small busi-
9 ness concerns"; and
10 (2) in subsection (b)(1) by inserting after
11 "smaller enterprises" the following: "and small busi-
12 ness concerns".

13 **SEC. 504. EXPANDED USES FOR OPERATIONAL ASSISTANCE**
14 **IN MANUFACTURING.**

15 Section 351 of the Small Business Investment Act
16 of 1958 (15 U.S.C. 689), as amended by this Act, is fur-
17 ther amended in paragraph (5) by inserting after "busi-
18 ness development" the following: "or assistance that as-
19 sists a small business concern located in a low-income geo-
20 graphic area and engaged primarily in manufacturing with
21 retooling, updating, or replacing machinery or equip-
22 ment".

1 **SEC. 505. UPDATING DEFINITION OF LOW-INCOME GEO-**
2 **GRAPHIC AREA.**

3 Section 351 of the Small Business Investment Act
4 of 1958 (15 U.S.C. 689), as amended by this Act, is fur-
5 ther amended—

6 (1) by striking paragraphs (2) and (3);

7 (2) by inserting after paragraph (1) the fol-
8 lowing:

9 "(2) LOW-INCOME GEOGRAPHIC AREA.—The
10 term 'low-income geographic area' has the meaning
11 given the term 'low-income community' in section
12 45D(e) of the Internal Revenue Code of 1986."; and

13 (3) by redesignating paragraphs (4) through
14 (8) as paragraphs (3) through (7), respectively.

15 **SEC. 506. EXPANDING OPERATIONAL ASSISTANCE TO CON-**
16 **DITIONALLY APPROVED COMPANIES.**

17 Section 358(a) of the Small Business Investment Act
18 of 1958 (15 U.S.C. 689g(a)) is amended by adding at the
19 end the following:

20 "(6) GRANTS TO CONDITIONALLY APPROVED
21 COMPANIES.—

22 "(A) IN GENERAL.—Subject to the provi-
23 sions of this paragraph, upon the request of a
24 company conditionally approved under section
25 354(c), the Administrator shall make a grant to
26 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.".

SEC. 507. LIMITATION ON TIME FOR FINAL APPROVAL.

Section 354(d) of the Small Business Investment Act of 1958 (15 U.S.C. 689c(d)) is amended in the matter preceding paragraph (1) by striking "a period of time, not to exceed 2 years," and inserting "2 years".

1 **SEC. 508. STREAMLINED APPLICATION FOR NEW MARKETS**
2 **VENTURE CAPITAL PROGRAM.**

3 Not later than 60 days after the date of the enact-
4 ment of this Act, the Administrator of the Small Business
5 Administration shall prescribe standard documents for a
6 New Markets Venture Capital company final approval ap-
7 plication under section 354(e) of the Small Business In-
8 vestment Act of 1958 (15 U.S.C. 689c(e)). The Adminis-
9 trator shall ensure that the standard documents are de-
10 signed to substantially reduce the cost burden of the appli-
11 cation process for companies.

12 **SEC. 509. ELIMINATION OF MATCHING REQUIREMENT.**

13 Section 354(d)(2)(A)(i) of the Small Business Invest-
14 ment Act of 1958 (15 U.S.C. 689c(d)(2)(A)(i)) is amend-
15 ed—

16 (1) in subclause (I) by adding "and" at the
17 end;

18 (2) in subclause (II) by striking "and" at the
19 end; and

20 (3) by striking subclause (III).

21 **SEC. 510. SIMPLIFIED FORMULA FOR OPERATIONAL AS-**
22 **SISTANCE GRANTS.**

23 Section 358(a)(4)(A) of the Small Business Invest-
24 ment Act of 1958 (15 U.S.C. 689g(a)(4)(A)) is amend-
25 ed—

1 (1) by striking "shall be equal to" and all that
2 follows through the period at the end and inserting
3 "shall be equal to the lesser of—"; and
4 (2) by adding at the end the following:
5 "(i) 10 percent of the resources (in
6 cash or in-kind) raised by the company
7 under section 354(d)(2); or
8 "(ii) $1,000,000.".

9 **SEC. 511. AUTHORIZATION OF APPROPRIATIONS AND EN-**
10 **HANCED ALLOCATION FOR SMALL MANUFAC-**
11 **TURING.**

12 Section 368(a) of the Small Business Investment Act
13 of 1958 (15 U.S.C. 689q(a)) is amended—
14 (1) in the matter preceding paragraph (1) by
15 striking "fiscal years 2001 through 2006" and in-
16 serting "fiscal years 2010 and 2011";
17 (2) in paragraph (1)—
18 (A) by striking "$150,000,000" and in-
19 serting "$100,000,000"; and
20 (B) by inserting before the period at the
21 end the following: ", of which not less than 50
22 percent shall be used to guarantee debentures
23 of companies engaged primarily in development
24 of and investment in small business concerns lo-

1 cated in low-income geographic areas and en-
2 gaged primarily in manufacturing"; and
3 (3) in paragraph (2)—
4 (A) by striking "$30,000,000" and insert-
5 ing "$20,000,000"; and
6 (B) by inserting before the period at the
7 end the following: ", of which not less than 50
8 percent shall be used to make grants to compa-
9 nies engaged primarily in development of and
10 investment in small business concerns located in
11 low-income geographic areas and engaged pri-
12 marily in manufacturing".

13 Subtitle B—Expanded Investment 14 in Small Business Renewable 15 Energy

16 SEC. 521. EXPANDED INVESTMENT IN RENEWABLE EN- 17 ERGY.

18 Part C of title III of the Small Business Investment
19 Act of 1958 (15 U.S.C. 690 et seq.) is amended—
20 (1) in the heading by striking "**RENEWABLE**
21 **FUEL CAPITAL INVESTMENT**" and inserting "**RE-**
22 **NEWABLE ENERGY CAPITAL INVESTMENT**";
23 (2) in the heading of paragraph (4) of section
24 381 by striking "RENEWABLE FUEL CAPITAL IN-

1 VESTMENT" and inserting "RENEWABLE ENERGY
2 CAPITAL INVESTMENT";
3 (3) in the heading of section 384 by striking
4 "**RENEWABLE FUEL CAPITAL INVESTMENT**" and
5 inserting "**RENEWABLE ENERGY CAPITAL IN-**
6 **VESTMENT**"; and
7 (4) by striking "Renewable Fuel Capital Invest-
8 ment" each place it appears and inserting "Renew-
9 able Energy Capital Investment".

10 **SEC. 522. RENEWABLE ENERGY CAPITAL INVESTMENT PRO-**
11 **GRAM MADE PERMANENT.**

12 Part C of title III of the Small Business Investment
13 Act of 1958 (15 U.S.C. 690 et seq.), as amended by this
14 Act, is further amended—
15 (1) in the heading by striking "**PILOT**"; and
16 (2) by striking section 398.

17 **SEC. 523. EXPANDED ELIGIBILITY FOR SMALL BUSINESSES.**

18 Part C of title III of the Small Business Investment
19 Act of 1958 (15 U.S.C. 690 et seq.), as amended by this
20 Act, is further amended by striking "smaller enterprises"
21 each place it appears and inserting "small business con-
22 cerns".

1 **SEC. 524. EXPANDED USES FOR OPERATIONAL ASSISTANCE**
2 **IN MANUFACTURING AND SMALL BUSI-**
3 **NESSES.**

4 Section 381(1) of the Small Business Investment Act
5 of 1958 (15 U.S.C. 690(1)) is amended by inserting after
6 "business development" the following: ", assistance that
7 assists a small business concern to reduce energy con-
8 sumption, or assistance that assists a small business con-
9 cern engaged primarily in manufacturing with retooling,
10 updating, or replacing machinery or equipment".

11 **SEC. 525. EXPANSION OF RENEWABLE ENERGY CAPITAL IN-**
12 **VESTMENT PROGRAM.**

13 (a) ADMINISTRATION PARTICIPATION REQUIRED.—
14 Section 383 of the Small Business Investment Act of 1958
15 (15 U.S.C. 690b) is amended by striking "under which
16 the Administrator may" and inserting "under which the
17 Administrator shall".

18 (b) REPORT TO CONGRESS.—Not later than 1 year
19 after the date of the enactment of this Act, the Adminis-
20 trator of the Small Business Administration shall submit
21 to Congress a report describing any expansion of the Re-
22 newable Energy Capital Investment Program as a result
23 of this section.

1 **SEC. 526. SIMPLIFIED FEE STRUCTURE TO EXPEDITE IM-**
2 **PLEMENTATION.**

3 Section 387(a) of the Small Business Investment Act
4 of 1958 (15 U.S.C. 690f(a)) is amended by striking "or
5 grant".

6 **SEC. 527. INCREASED OPERATIONAL ASSISTANCE GRANTS.**

7 Section 397(a) of the Small Business Investment Act
8 of 1958 (15 U.S.C. 690p(a)) is amended by inserting after
9 "and 2009" the following: "and $30,000,000 in such
10 grants for each of fiscal years 2010 and 2011".

11 **SEC. 528. AUTHORIZATIONS OF APPROPRIATIONS.**

12 Section 397 of the Small Business Investment Act
13 of 1958 (15 U.S.C. 690p) is amended—

14 (1) in the heading by inserting after "**APPRO-**
15 **PRIATIONS**" the following: "**AND PROGRAM LEV-**
16 **ELS**"; and

17 (2) by adding at the end the following:

18 "(c) PROGRAM LEVELS.—For the programs author-
19 ized by this part, the Administration is authorized to make
20 $1,000,000,000 in guarantees of debentures for each of
21 fiscal years 2010 and 2011.".

TITLE VI—SMALL BUSINESS HEALTH INFORMATION TECHNOLOGY FINANCING PROGRAM

SEC. 601. SMALL BUSINESS HEALTH INFORMATION TECHNOLOGY FINANCING PROGRAM.

The Small Business Act (15 U.S.C. 631 et seq.), as amended by this Act, is further amended by redesignating section 45 as section 46 and by inserting the following new section after section 44:

"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

1 health data and information, such that this in-
2 formation is accessible at the times and places
3 where clinical decisions will be or are likely to
4 be made;
5 "(B) enhancement of communication be-
6 tween patients and health care providers;
7 "(C) improvement of quality measurement
8 by eligible professionals enabling them to col-
9 lect, store, measure, and report on the proc-
10 esses and outcomes of individual and population
11 performance and quality of care;
12 "(D) improvement of evidence-based deci-
13 sion support; or
14 "(E) enhancement of consumer and pa-
15 tient empowerment.
16 Such term shall not include information technology
17 whose sole use is financial management, mainte-
18 nance of inventory of basic supplies, or appointment
19 scheduling.
20 "(2) The term 'eligible professional' means any
21 of the following:
22 "(A) A physician (as defined in section
23 1861(r) of the Social Security Act (42 U.S.C.
24 1395x(r)).

1 "(B) A practitioner described in section
2 1842(b)(18)(C) of that Act.
3 "(C) A physical or occupational therapist
4 or a qualified speech-language pathologist.
5 "(D) A qualified audiologist (as defined in
6 section 1861(ll)(3)(B)) of that Act.
7 "(E) A qualified medical transcriptionist
8 who is either certified by or registered with the
9 Association for Healthcare Documentation In-
10 tegrity, or a successor association thereto.
11 "(F) A State-licensed pharmacist.
12 "(G) A State-licensed supplier of durable
13 medical equipment, prosthetics, orthotics, or
14 supplies.
15 "(3) The term 'qualified eligible professional'
16 means an eligible professional whose office can be
17 classified as a small business concern by the Admin-
18 istrator for purposes of this Act under size stand-
19 ards established under section 3 of this Act.
20 "(4) The term 'qualified medical
21 transcriptionist' means a specialist in medical lan-
22 guage and the healthcare documentation process
23 who interprets and transcribes dictation by physi-
24 cians and other healthcare professionals to ensure

1 accurate, complete, and consistent documentation of
2 healthcare encounters.
3 "(b) LOAN GUARANTEES FOR QUALIFIED ELIGIBLE
4 PROFESSIONALS.—
5 "(1) IN GENERAL.—Subject to paragraph (2),
6 the Administrator may guarantee up to 90 percent
7 of the amount of a loan made to a qualified eligible
8 professional to be used for the acquisition of health
9 information technology for use in such eligible pro-
10 fessional's medical practice and for the costs associ-
11 ated with the installation of such technology. Except
12 as otherwise provided in this section, the terms and
13 conditions that apply to loans made under section
14 7(a) of this Act shall apply to loan guarantees made
15 under this section.
16 "(2) LIMITATIONS ON GUARANTEE AMOUNTS.—
17 The maximum amount of loan principal guaranteed
18 under this subsection may not exceed—
19 "(A) $350,000 with respect to any single
20 qualified eligible professional; and
21 "(B) $2,000,000 with respect to a single
22 group of affiliated qualified eligible profes-
23 sionals.
24 "(c) FEES.—(1) The Administrator may impose a
25 guarantee fee on the borrower for the purpose of reducing

1 the cost (as defined in section 502(5) of the Federal Credit
2 Reform Act of 1990) of the guarantee to zero in an
3 amount not to exceed 2 percent of the total guaranteed
4 portion of any loan guaranteed under this section. The Ad-
5 ministrator may also impose annual servicing fees on lend-
6 ers not to exceed 0.5 percent of the outstanding balance
7 of the guarantees on lenders' books.

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

13 "(d) DEFERRAL PERIOD.—Loans guaranteed under
14 this section shall carry a deferral period of not less than
15 1 year and not more than 3 years. The Administrator shall
16 have the authority to subsidize interest during the deferral
17 period.

18 "(e) EFFECTIVE DATE.—No loan may be guaranteed
19 under this section until the meaningful EHR use require-
20 ments have been determined by the Secretary of Health
21 and Human Services.

22 "(f) SUNSET.—No loan may be guaranteed under
23 this section after the date that is 5 years after meaningful
24 EHR use requirements have been determined by the Sec-
25 retary of Health and Human Services.

1 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as are nec-
3 essary for the cost (as defined in section 502(5) of the
4 Federal Credit Reform Act of 1990) of guaranteeing
5 $10,000,000,000 in loans under this section. The Admin-
6 istrator shall determine such program cost separately and
7 distinctly from other programs operated by the Adminis-
8 trator.".

9 TITLE VII—SMALL BUSINESS 10 EARLY-STAGE INVESTMENT 11 PROGRAM

12 SEC. 701. SMALL BUSINESS EARLY-STAGE INVESTMENT 13 PROGRAM.

14 Title III of the Small Business Investment Act of
15 1958 (15 U.S.C. 681 et seq.) is amended by adding at
16 the end the following:

17 "PART D—SMALL BUSINESS EARLY-STAGE 18 INVESTMENT PROGRAM

19 "SEC. 399A. ESTABLISHMENT OF PROGRAM.

20 "The Administrator shall establish and carry out an
21 early-stage investment program (hereinafter referred to in
22 this part as the 'program') to provide equity investment
23 financing to support early-stage small businesses in tar-
24 geted industries in accordance with this part.

1 **"SEC. 399B. ADMINISTRATION OF PROGRAM.**

2 "The program shall be administered by the Adminis-
3 trator acting through the Associate Administrator de-
4 scribed under section 201.

5 **"SEC. 399C. APPLICATIONS.**

6 "(a) IN GENERAL.—Any incorporated body, limited
7 liability company, or limited partnership organized and
8 chartered or otherwise existing under Federal or State law
9 for the purpose of performing the functions and con-
10 ducting the activities contemplated under the program and
11 any small business investment company may submit to the
12 Administrator an application to participate in the pro-
13 gram.

14 "(b) REQUIREMENTS FOR APPLICATION.—An appli-
15 cation to participate in the program shall include the fol-
16 lowing:

17 "(1) A business plan describing how the appli-
18 cant intends to make successful venture capital in-
19 vestments in early-stage small businesses in targeted
20 industries.

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

1 "(3) A description of the extent to which the
2 applicant meets the selection criteria under section
3 399D.
4 "(c) APPLICATIONS FROM SMALL BUSINESS INVEST-
5 MENT COMPANIES.—The Administrator shall establish an
6 abbreviated application process for small business invest-
7 ment companies that have received a license under section
8 301 and that are applying to participate in the program.
9 Such abbreviated process shall incorporate a presumption
10 that such small business investment companies satisfac-
11 torily meet the selection criteria under paragraphs (3) and
12 (5) of section 399D(b).

13 **"SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**
14 **COMPANIES.**

15 "(a) IN GENERAL.—Not later than 90 days after the
16 date on which the Administrator receives an application
17 from an applicant under section 399C, the Administrator
18 shall make a final determination to approve or disapprove
19 such applicant to participate in the program and shall
20 transmit such determination to the applicant in writing.
21 "(b) SELECTION CRITERIA.—In making a determina-
22 tion under subsection (a), the Administrator shall consider
23 each of the following:

1 "(1) The likelihood that the applicant will meet
2 the goals specified in the business plan of the appli-
3 cant.
4 "(2) The likelihood that the investments of the
5 applicant will create or preserve jobs, both directly
6 and indirectly.
7 "(3) The character and fitness of the manage-
8 ment of the applicant.
9 "(4) The experience and background of the
10 management of the applicant.
11 "(5) The extent to which the applicant will con-
12 centrate investment activities on early-stage small
13 businesses in targeted industries.
14 "(6) The likelihood that the applicant will
15 achieve profitability.
16 "(7) The experience of the management of the
17 applicant with respect to establishing a profitable in-
18 vestment track record.
19 **"SEC. 399E. GRANTS.**
20 "(a) IN GENERAL.—The Administrator may make
21 one or more grants to a participating investment company.
22 "(b) GRANT AMOUNTS.—
23 "(1) NON-FEDERAL CAPITAL.—A grant made
24 to a participating investment company under the
25 program may not be in an amount that exceeds the

1 amount of the capital of such company that is not
2 from a Federal source and that is available for in-
3 vestment on or before the date on which a grant is
4 drawn upon. Such capital may include legally bind-
5 ing commitments with respect to capital for invest-
6 ment.

7 "(2) LIMITATION ON AGGREGATE AMOUNT.—
8 The aggregate amount of all grants made to a par-
9 ticipating investment company under the program
10 may not exceed $100,000,000.

11 "(c) GRANT PROCESS.—In making a grant under the
12 program, the Administrator shall commit a grant amount
13 to a participating investment company and the amount of
14 each such commitment shall remain available to be drawn
15 upon by such company—

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

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

1 **"SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSI-**
2 **NESSES IN TARGETED INDUSTRIES.**

3 "(a) IN GENERAL.—As a condition of receiving a
4 grant under the program, a participating investment com-
5 pany shall make all of the investments of such company
6 in small business concerns, of which at least 50 percent
7 shall be early-stage small businesses in targeted indus-
8 tries.

9 "(b) EVALUATION OF COMPLIANCE.—With respect to
10 a grant amount committed to a participating investment
11 company under section 399E, the Administrator shall
12 evaluate the compliance of such company with the require-
13 ments under this section if such company has drawn upon
14 50 percent of such commitment.

15 **"SEC. 399G. PRO RATA INVESTMENT SHARES.**

16 "Each investment made by a participating invest-
17 ment company under the program shall be treated as com-
18 prised of capital from grants under the program according
19 to the ratio that capital from grants under the program
20 bears to all capital available to such company for invest-
21 ment.

22 **"SEC. 399H. GRANT INTEREST.**

23 "(a) GRANT INTEREST.—

24 "(1) IN GENERAL.—As a condition of receiving
25 a grant under the program, a participating invest-

1 ment company shall convey a grant interest to the
2 Administrator in accordance with paragraph (2).
3 "(2) EFFECT OF CONVEYANCE.—The grant in-
4 terest conveyed under paragraph (1) shall have all
5 the rights and attributes of other investors attrib-
6 utable to their interests in the participating invest-
7 ment company, but shall not denote control or vot-
8 ing rights to the Administrator. The grant interest
9 shall entitle the Administrator to a pro rata portion
10 of any distributions made by the participating in-
11 vestment company equal to the percentage of capital
12 in the participating investment company that the
13 grant comprises. The Administrator shall receive dis-
14 tributions from the participating investment com-
15 pany at the same times and in the same amounts as
16 any other investor in the company with a similar in-
17 terest. The investment company shall make alloca-
18 tions of income, gain, loss, deduction, and credit to
19 the Administrator with respect to the grant interest
20 as if the Administrator were an investor.
21 "(b) MANAGER PROFITS.—As a condition of receiv-
22 ing a grant under the program, the manager profits inter-
23 est payable to the managers of a participating investment
24 company under the program shall not exceed 20 percent
25 of profits, exclusive of any profits that may accrue as a

1 result of the capital contributions of any such managers
2 with respect to such company. Any excess of this amount,
3 less taxes payable thereon, shall be returned by the man-
4 agers and paid to the investors and the Administrator in
5 proportion to the capital contributions and grants paid in.
6 No manager profits interest (other than a tax distribution)
7 shall be paid prior to the repayment to the investors and
8 the Administrator of all contributed capital and grants
9 made.

10 "(c) DISTRIBUTION REQUIREMENTS.—As a condition
11 of receiving a grant under the program, a participating
12 investment company shall make all distributions to all in-
13 vestors in cash and shall make distributions within a rea-
14 sonable time after exiting investments, including following
15 a public offering or market sale of underlying investments.

16 **"SEC. 399I. FUND.**

17 "There is hereby created within the Treasury a sepa-
18 rate fund for grants which shall be available to the Admin-
19 istrator subject to annual appropriations as a revolving
20 fund to be used for the purposes of the program. All
21 amounts received by the Administrator, including any
22 moneys, property, or assets derived by the Administrator
23 from operations in connection with the program, shall be
24 deposited in the fund. All expenses and payments, exclud-
25 ing administrative expenses, pursuant to the operations of

1 the Administrator under the program shall be paid from
2 the fund.

3 **"SEC. 399J. APPLICATION OF OTHER SECTIONS.**

4 "To the extent not inconsistent with requirements
5 under this part, the Administrator may apply sections
6 309, 311, 312, 313, and 314 to activities under this part
7 and an officer, director, employee, agent, or other partici-
8 pant in a participating investment company shall be sub-
9 ject to the requirements under such sections.

10 **"SEC. 399K. DEFINITIONS.**

11 "In this part, the following definitions apply:

12 "(1) EARLY-STAGE SMALL BUSINESS IN A TAR-
13 GETED INDUSTRY.—The term 'early-stage small
14 business in a targeted industry' means a small busi-
15 ness concern that—

16 "(A) is domiciled in a State;

17 "(B) has not generated gross annual sales
18 revenues exceeding $15,000,000 in any of the
19 previous 3 years; and

20 "(C) is engaged primarily in researching,
21 developing, manufacturing, producing, or bring-
22 ing to market goods, products, or services with
23 respect to any of the following business sectors:

24 "(i) Agricultural technology.

25 "(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 VIII—SBA DISASTER PROGRAM REFORM

SEC. 801. REVISED COLLATERAL REQUIREMENTS.

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

(1) by striking "(e) [RESERVED]." and "(f) [RESERVED]."; and

1 (2) in subsection (f), as added by section
2 12068(a)(2) of the Small Business Disaster Re-
3 sponse and Loan Improvements Act of 2008 (sub-
4 title B of title XII of the Food, Conservation, and
5 Energy Act of 2008; Public Law 110–246), by add-
6 ing at the end the following:
7 "(2) REVISED COLLATERAL REQUIREMENTS.—
8 In making a loan with respect to a business under
9 subsection (b), if the total approved amount of such
10 loan is less than or equal to $250,000, the Admini-
11 trator may not require the borrower to use the bor-
12 rower's home as collateral.".

13 **SEC. 802. INCREASED LIMITS.**

14 Section 7(b) of the Small Business Act (15 U.S.C.
15 636(b)) is amended—
16 (1) in paragraph (3)(E) by striking
17 "$1,500,000" each place it appears and inserting
18 "$3,000,000"; and
19 (2) in paragraph (8)(A) by striking
20 "$2,000,000" and inserting "$3,000,000".

21 **SEC. 803. REVISED REPAYMENT TERMS.**

22 Section 7(f) of the Small Business Act (15 U.S.C.
23 636(f)) is amended by adding at the end the following:
24 "(3) REVISED REPAYMENT TERMS.—In making
25 loans under subsection (b), the Administrator—

1 "(A) may not require repayment to begin
2 until the date that is 12 months after the date
3 on which the final disbursement of approved
4 amounts is made; and
5 "(B) shall calculate the amount of repay-
6 ment based solely on the amounts disbursed.".

7 **SEC. 804. REVISED DISBURSEMENT PROCESS.**

8 Section 7(f) of the Small Business Act (15 U.S.C.
9 636(f)), as amended by this Act, is further amended by
10 adding at the end the following:
11 "(4) REVISED DISBURSEMENT PROCESS.—In
12 making a loan under subsection (b), the Adminis-
13 trator shall disburse loan amounts in accordance
14 with the following:
15 "(A) If the total amount approved with re-
16 spect to such loan is less than or equal to
17 $150,000—
18 "(i) the first disbursement with re-
19 spect to such loan shall consist of 40 per-
20 cent of the total loan amount, or a lesser
21 percentage of the total loan amount if the
22 Administrator and the borrower agree on
23 such a lesser percentage;
24 "(ii) the second disbursement shall
25 consist of 50 percent of the loan amounts

1 that remain after the first disbursement,
2 and shall be made when the borrower has
3 produced satisfactory receipts to dem-
4 onstrate the proper use of 50 percent of
5 the first disbursement; and
6 "(iii) the third disbursement shall
7 consist of the loan amounts that remain
8 after the preceding disbursements, and
9 shall be made when the borrower has pro-
10 duced satisfactory receipts to demonstrate
11 the proper use of the first disbursement
12 and 50 percent of the second disburse-
13 ment.
14 "(B) If the total amount approved with re-
15 spect to such loan is more than $150,000 but
16 less than or equal to $500,000—
17 "(i) the first disbursement with re-
18 spect to such loan shall consist of 20 per-
19 cent of the total loan amount, or a lesser
20 percentage of the total loan amount if the
21 Administrator and the borrower agree on
22 such a lesser percentage;
23 "(ii) the second disbursement shall
24 consist of 30 percent of the loan amounts
25 that remain after the first disbursement,

1 and shall be made when the borrower has
2 produced satisfactory receipts to dem-
3 onstrate the proper use of 50 percent of
4 the first disbursement;
5 "(iii) the third disbursement shall
6 consist of 25 percent of the loan amounts
7 that remain after the first and second dis-
8 bursements, and shall be made when the
9 borrower has produced satisfactory receipts
10 to demonstrate the proper use of the first
11 disbursement and 50 percent of the second
12 disbursement; and
13 "(iv) the fourth disbursement shall
14 consist of the loan amounts that remain
15 after the preceding disbursements, and
16 shall be made when the borrower has pro-
17 duced satisfactory receipts to demonstrate
18 the proper use of the first and second dis-
19 bursements and 50 percent of the third
20 disbursement.
21 "(C) If the total amount approved with re-
22 spect to such loan is more than $500,000—
23 "(i) the first disbursement with re-
24 spect to such loan shall consist of at least
25 $100,000, or a lesser amount if the Ad-

1 ministrator and the borrower agree on
2 such a lesser amount; and
3 "(ii) the number of disbursements
4 after the first, and the amount of each
5 such disbursement, shall be in the discre-
6 tion of the Administrator, but the amount
7 of each such disbursement shall be at least
8 $100,000.".

9 **SEC. 805. GRANT PROGRAM.**

10 Section 7(b) of the Small Business Act (15 U.S.C.
11 636(b)), as amended by this Act, is further amended by
12 inserting after paragraph (9) the following:

13 "(10) GRANTS TO DISASTER-AFFECTED SMALL
14 BUSINESSES.—
15 "(A) IN GENERAL.—If the Administrator
16 declares eligibility for additional disaster assist-
17 ance under paragraph (9), the Administrator
18 may make a grant, in an amount not exceeding
19 $100,000, to a small business concern that—
20 "(i) is located in an area affected by
21 the applicable major disaster;
22 "(ii) submits to the Administrator a
23 certification by the owner of the concern
24 that such owner intends to reestablish the

1 concern in the same county in which the
2 concern was originally located;
3 "(iii) has applied for, and was rejected
4 for, a conventional disaster assistance loan
5 under this subsection; and
6 "(iv) was in existence for at least 2
7 years before the date on which the applica-
8 ble disaster declaration was made.
9 "(B) PRIORITY.—In making grants under
10 this paragraph, the Administrator shall give
11 priority to a small business concern that the
12 Administrator determines is economically viable
13 but unable to meet short-term financial obliga-
14 tions.
15 "(C) PROGRAM LEVEL AND AUTHORIZA-
16 TION OF APPROPRIATIONS.—
17 "(i) PROGRAM LEVEL.—The Adminis-
18 trator is authorized to make $100,000,000
19 in grants under this paragraph for each of
20 fiscal years 2010 and 2011.
21 "(ii) AUTHORIZATION OF APPROPRIA-
22 TIONS.—There are authorized to be appro-
23 priated to the Administrator such sums as
24 may be necessary to carry out this para-
25 graph.".

1 **SEC. 806. REGIONAL DISASTER WORKING GROUPS.**

2 Section 40 of the Small Business Act (15 U.S.C.
3 657l) is amended—

4 (1) in subsection (a), in the matter preceding
5 paragraph (1), by striking "or" and inserting "and";

6 (2) by redesignating subsection (d) as sub-
7 section (e); and

8 (3) by inserting after subsection (c) the fol-
9 lowing:

10 "(d) REGIONAL DISASTER WORKING GROUPS.—In
11 carrying out subsection (a), the Administrator, acting
12 through the regional administrators of the regional offices
13 of the Administration, shall develop a disaster prepared-
14 ness and response plan for each region of the Administra-
15 tion. Each such plan shall be developed in cooperation
16 with Federal, State, and local emergency response authori-
17 ties and representatives of businesses located in the region
18 to which such plan applies. Each such plan shall identify
19 and include a plan relating to the 3 disasters, natural or
20 manmade, most likely to occur in the region to which such
21 plan applies.".

22 **SEC. 807. OUTREACH GRANTS FOR LOAN APPLICANT AS-**
23 **SISTANCE.**

24 Section 7(b) of the Small Business Act (15 U.S.C.
25 636(b)), as amended by this Act, is further amended by
26 inserting after paragraph (10) the following:

1 "(11) OUTREACH GRANTS FOR LOAN APPLI-
2 CANT ASSISTANCE.—
3 "(A) IN GENERAL.—From amounts made
4 available for administrative expenses relating to
5 activities under this subsection, the Adminis-
6 trator is authorized to make grants to the fol-
7 lowing:
8 "(i) A women's business center in an
9 area affected by a disaster.
10 "(ii) A small business development
11 center in an area affected by a disaster.
12 "(iii) A Veteran Business Outreach
13 Center in an area affected by a disaster.
14 "(iv) A chamber of commerce in an
15 area affected by a disaster.
16 "(B) USE OF GRANT.—An entity specified
17 under subparagraph (A) shall use a grant re-
18 ceived under this paragraph to provide applica-
19 tion preparation assistance to applicants for a
20 loan under this subsection.
21 "(C) PROGRAM LEVEL.—The Adminis-
22 trator is authorized to make $50,000,000 in
23 grants under this paragraph for each of fiscal
24 years 2010 and 2011.".

1 **SEC. 808. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 20 of the Small Business Act (15 U.S.C. 631
3 note), as amended by this Act, is further amended—

4 (1) by redesignating subsection (j) as sub-
5 section (k); and

6 (2) by inserting after subsection (i) the fol-
7 lowing:

8 "(j) FISCAL YEARS 2010 AND 2011 WITH RESPECT
9 TO SECTION 7(b).—There is authorized to be appropriated
10 such sums as may be necessary for administrative ex-
11 penses and loans under section 7(b).".

12 # TITLE IX—REGULATIONS

13 **SEC. 901. REGULATIONS.**

14 Except as otherwise provided in this Act or in amend-
15 ments made by this Act, after an opportunity for notice
16 and comment, but not later than 180 days after the date
17 of the enactment of this Act, the Administrator shall issue
18 regulations to carry out this Act and the amendments
19 made by this Act.

○

Statement of the Honorable Kathy Dahlkemper
October 21, 2009
House Committee on Small Business
Markup of the "Small Business Financing and Investment Act of 2009"

Thank you, Madam Chairwoman. As Congress continues its work to improve American healthcare, there are two issues that come up time and time again-- increased efficiency, and reduced cost. These are the primary goals of comprehensive reform on both sides of the aisle, and they are the greatest benefits of Health Information Technology, or HIT.

Electronic medical records streamline the flow of heath care data, improving communication between doctors and hospitals. Importantly, they also do a great deal to reign in costs. According to some estimates, wide scale adoption could bring annual savings of $77 billion. Already, the majority of big hospitals are capitalizing on HIT's cost cutting benefits. And yet despite significant uptake amongst large providers, small practices are reluctant to adopt. In fact, only 13% of single-doctor practices use the technology. This is largely because of HIT's hefty price tag.

While most small practices are eager to implement electronic medical records, few can afford the cost of adoption. The starting price for an HIT system is $32,000 per doctor, which means the typical 3-doctor practice pays close to $100,000. That's a significant outlay for any business, let alone a small firm. Through the legislation we are discussing this afternoon, however, those expenses will be blunted considerably.

I'm proud to have introduced one part of today's larger bill--The Small Business Health Information Technology Financing Act. This measure will go a long way in making HIT affordable for small firms. To begin it will allow practices to defer payment on loans for the technology. Doing so will promote greater adoption amongst small practices, and create better options for consumers. After all, most Americans use small practices as their primary care providers. This is particularly true in rural areas. We need to be sure that every American is able to enjoy the benefits of a modernized medical system--not just those who live near big hospitals. That's why we're working to deliver better HIT financing to small practices.

Small healthcare providers-- like all other small ventures--are bearing the brunt of restricted lending and tightened credit. As a result, many offices that might have considered HIT in the past are now putting those purchases on hold. Today's legislation addresses that hesitancy, bringing loans for HIT within the reach of small business budgets. Importantly, we are going to slash lending fees. And we're doing so for both borrowers *and* lenders. By reducing servicing costs, we can encourage more lenders to offer loans to small practices. At a time when most banks are scaling back their small businesses options, this measure is especially important. Similarly, a move to increase loan guarantees to 90% will also go a long way in boosting lending.

Madam Chair, access to capital is a key issue for small firms in every industry. But within the medical field, it is of particular importance. As we work to improve America's healthcare system, small firms can play a vital role. By helping them afford HIT, this legislation will mark an important step toward increased efficiency, reduced costs, and a system that works for all Americans, regardless of location. I urge the passage of the bill and yield back the balance of my time.

Statement of the Honorable Brad Ellsworth
October 21, 2009
House Committee on Small Business
Markup of the Small Business Financing and Investment Act of 2009

Thank you, Madam Chair.

As we know, one side effect of economic recessions is that they are often accompanied by a spurt in entrepreneurship. During a downturn, when large companies stop hiring, many Americans launch their own businesses to help support their families. Time and again, this pattern has led our nation back to recovery and offered many Americans another option for getting by when times are tough.

The Small Business Administration's microloan program helps entrepreneurs like these secure start-up capital to get new ventures off the ground. During economic downturns, when Americans are seeking new sources of income, these very small loans are even more important.

Unfortunately, the SBA's microloan program remains under-utilized. Too many of the funds Congress has provided to help these small businesses are being left on the table. At the same time, while this program is not fully used, many micro-businesses are struggling to find affordable capital. In parts of Indiana, fewer than 10 percent of entrepreneurs find the seed capital they need to launch their businesses. Clearly, we need to bridge this gap, so that more aspiring business owners use this program and find the credit they need to get started.

The legislation before us includes a bill I authored to improve how the SBA's microloan program functions. The "Small Business Microlending Expansion Act" makes a number of changes to improve this program and expand its reach to more small businesses.

Under the bill, we will allow unused funds to go toward reducing the interest rates that borrowers pay in the program. Rather than seeing those funds go to waste, we use them to make microloans more affordable.

The bill will also help more lenders to get involved in the program. And, it allows existing lenders to expand the amount of money they lend. These changes will expand the program's capacity – and increase the capital flowing to small businesses. This, in turn, gives businesses more options and makes it easier to access the microloan program.

Finally, the legislation increases the amount lenders can spend on technical assistance for small firms. Micro-lenders already provide valuable services, like teaching budding entrepreneurs how to write a workable business plan. Together, all of these steps will ensure that the SBA's microloan program better serves America's entrepreneurs.

Madam Chair, the American spirit of entrepreneurship is even more critical during times economic downturns. By improving the SBA's microloan program and getting more capital in the hands of small business owners, this bill will accelerate our nation's economic recovery. I urge the adoption of this bill and yield back the balance of my time.

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