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SMALL BUSINESS LENDING IMPROVEMENTS ACT OF 2007

APRIL 20, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1332]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 1332) to improve the access to capital programs of the Small Business Administration, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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I. AMENDMENT TO H.R. 1332

The Amendment is as follows:

Strike all after the enacting clause and insert the following:

59–006

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Lending Improvements Act of 2007".

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

Sec. 1. Short title; table of contents.

TITLE I—7(A) PROGRAM

Sec. 101. Authority for fee contributions.
Sec. 102. Rural Lending Outreach Program.
Sec. 103. Community Express program made permanent.
Sec. 104. Medical Professionals in Designated Shortage Areas Program.
Sec. 105. Increased Veteran Participation Program.
Sec. 106. Alternative size standard.
Sec. 107. Support to regional offices.

TITLE II—CERTIFIED DEVELOPMENT COMPANY ECONOMIC DEVELOPMENT LOAN PROGRAM

Sec. 201. Certified Development Company Economic Development Loan Program.
Sec. 202. Definitions.
Sec. 203. Eligibility of development companies to be designated as certified development companies.
Sec. 204. Definition of rural areas.
Sec. 205. Businesses in low-income areas.
Sec. 206. Combinations of certain goals.
Sec. 207. Refinancing.
Sec. 208. Additional equity injections.
Sec. 209. Loan liquidations.
Sec. 210. Closing costs.
Sec. 211. Maximum Certified Development Company and 7(a) loan eligibility.
Sec. 212. Eligibility for energy efficiency projects.
Sec. 213. Loans for plant projects used for energy-efficient purposes.
Sec. 214. Extension of period during which loss reserves of premier certified lenders determined on the basis of outstanding balance of debentures.
Sec. 215. Extension of alternative loss reserve pilot program for certain premier certified lenders.

TITLE I—7(A) PROGRAM

SEC. 101. AUTHORITY FOR FEE CONTRIBUTIONS.

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

(1) in paragraph (18)(A) by striking "shall collect" and inserting "shall assess and collect";

(2) in paragraph (18) by adding at the end the following:

"(C) OFFSET.—The Administrator may, as provided in paragraph (32), offset fees assessed and collected under subparagraph (A).";

(3) in paragraph (23) by striking subparagraph (C) and adding at the end the following:

"(C) OFFSET.—The Administrator may, as provided in paragraph (32), offset fees assessed and collected under subparagraph (A)."; and

(4) by adding at the end the following:

"(32) FEE CONTRIBUTIONS.—

"(A) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall—

"(i) first consider contributing to fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

"(ii) then consider contributing to fees paid by small business lenders under paragraph (23)(A).

"(B) QUARTERLY ADJUSTMENT.—Each fee contribution under subparagraph (A) shall be effective for one fiscal quarter and shall be adjusted as necessary for each fiscal quarter thereafter to ensure that the amounts under subparagraph (A) are fully used. The fee contribution for a fiscal quarter shall be based on the loans that the Administrator projects will be made during that fiscal quarter, given the program level authorized by law for that fiscal year and any other factors that the Administrator considers appropriate.".

SEC. 102. RURAL LENDING OUTREACH PROGRAM.

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

(1) by striking paragraph (25)(C); and

(2) by adding at the end the following:

"(33) RURAL LENDING OUTREACH PROGRAM.—The Administrator shall carry out a rural lending outreach program to provide up to an 85 percent guaranty for loans of $250,000 or less. The program shall be carried out only through lenders located in rural areas (as 'rural' is defined in section 501(f) of the Small

Business Investment Act of 1958). For a loan made through the program, the following shall apply:

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

"(B) The program shall use abbreviated application and documentation requirements.

"(C) 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.

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

"(34) COMMUNITY EXPRESS PROGRAM.—The Administrator shall carry out a Community Express Program for loans of $250,000 or less. For a loan made under this paragraph, the following shall apply:

"(A) The loan shall be made to a business concern—

"(i) the majority ownership interest of which is directly held by individuals who are women, socially or economically disadvantaged individuals (as defined by the Administrator), or veterans of the Armed Forces; or

"(ii) that is located in a low- or moderate-income area, as defined by the Administrator.

"(B) The loan shall comply with the collateral policy of the Administration, except that, if the amount of the loan is less than or equal to $25,000, the Administration shall not require the lender to take collateral.

"(C) The loan shall include terms requiring the lender to ensure that technical assistance is provided to the borrower, through the lender or a third-party provider.

"(D) The Administration shall approve or disapprove the loan within 36 hours.".

(b) NOTICE AND COMMENT.—The program required by section 7(a)(34) of the Small Business Act, as added by subsection (a), shall be established after the opportunity for notice and comment and not later than 180 days after the date of the enactment of this Act.

SEC. 104. MEDICAL PROFESSIONALS IN DESIGNATED SHORTAGE AREAS PROGRAM.

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

"(35) MEDICAL PROFESSIONALS IN DESIGNATED SHORTAGE AREAS PROGRAM.—The Administrator shall carry out a Medical Professionals in Designated Shortage Areas Program. For a loan made under this paragraph, the following shall apply:

"(A) The loan shall be made to a business concern that provides properly licensed medical, dental, or psychiatric services to the public.

"(B) The loan shall be for the purpose of opening a business concern in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

"(C) The loan shall include the participation by the Administration equal to 90 percent of the balance of the financing outstanding at the time of disbursement.

"(D) The fees on the loan under paragraphs (18) and (23) shall be reduced by half.".

(b) NOTICE AND COMMENT.—The program required by section 7(a)(35) of the Small Business Act, as added by subsection (a), shall be established after the opportunity for notice and comment and not later than 180 days after the date of the enactment of this Act.

SEC. 105. INCREASED VETERAN PARTICIPATION PROGRAM.

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

"(36) INCREASED VETERAN PARTICIPATION PROGRAM.—The Administrator shall carry out an Increased Veteran Participation Program. For a loan made under this paragraph, the following shall apply:

"(A) The loan shall be made to a business concern the majority ownership interest of which is directly held by individuals who are veterans of the Armed Forces.

"(B) The loan shall include the participation by the Administration equal to 90 percent of the balance of the financing outstanding at the time of disbursement.

"(C) The fees on the loan under paragraphs (18) and (23) shall not apply.".

(b) NOTICE AND COMMENT.—The program required by section 7(a)(36) of the Small Business Act, as added by subsection (a), shall be established after the opportunity for notice and comment and not later than 180 days after the date of the enactment of this Act.

SEC. 106. ALTERNATIVE SIZE STANDARD.

(a) IN GENERAL.—Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

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

(b) APPLICABILITY.—Until the Administrator establishes, under section 3(a)(5) of the Small Business Act (as added by subsection (a)), an alternative size standard in the case of a lender making a loan under section 7(a) of that Act, the alternative size standard in section 121.301(b) of title 13, Code of Federal Regulations, shall apply to such a case.

SEC. 107. SUPPORT TO REGIONAL OFFICES.

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

"(37) SUPPORT TO REGIONAL OFFICES.—The Administrator shall carry out a program, within an element of the Administration already in existence as of the date of the enactment of the Small Business Lending Improvements Act of 2007, to provide support to regional offices of the Administration in assisting small lenders who do not participate in the preferred lender program to participate in the 7(a) program.".

TITLE II—CERTIFIED DEVELOPMENT COMPANY ECONOMIC DEVELOPMENT LOAN PROGRAM

SEC. 201. CERTIFIED DEVELOPMENT COMPANY ECONOMIC DEVELOPMENT LOAN PROGRAM.

Section 504 of the Small Business Investment Act of 1958 (15 U.S.C. 697a) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c); and

(2) by inserting before subsection (b) (as so redesignated) the following:

"(a) The program to provide financing to small businesses by guarantees of loans under this Act which are funded by debentures guaranteed by the Administration may be known as the "Certified Development Company Economic Development Loan Program".".

SEC. 202. DEFINITIONS.

Section 103(6) of the Small Business Investment Act of 1958 (15 U.S.C. 662(6)) is amended to read as follows:

"(6) the term 'development company' means an entity incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas in which it is authorized to operate by the Administration, and the term 'certified development company' means a development company which the Administration has determined meets the criteria of section 506;".

SEC. 203. ELIGIBILITY OF DEVELOPMENT COMPANIES TO BE DESIGNATED AS CERTIFIED DEVELOPMENT COMPANIES.

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

"SEC. 506. CERTIFIED DEVELOPMENT COMPANIES.

"(a) AUTHORITY TO ISSUE DEBENTURES.—A development company may issue debentures pursuant to this Act if the Administration certifies that the company meets the following criteria:

"(1) SIZE.—The development company is required to be a small concern with fewer than 500 employees and not under the control of any entity which does not meet the Administration's size standards as a small business, except that any development company which was certified by the Administration prior to December 31, 2005 may continue to issue debentures.

"(2) PURPOSE.—The primary purpose of the development company is to benefit the community by fostering economic development to create and preserve jobs and stimulate private investment.

"(3) PRIMARY FUNCTION.—The primary function of the development company is to accomplish its purpose by providing long term financing to small businesses by the utilization of the Certified Development Company Economic Development Loan Program. It may also provide or support such other local economic development activities to assist the community.

"(4) NON-PROFIT STATUS.—The development company is a non-profit corporation, except that a development company certified by the Administration prior to January 1, 1987, may retain its status as a for-profit corporation.

"(5) GOOD STANDING.—The development company is in good standing in its State of incorporation and in any other State in which it conducts business, and is in compliance with all laws, including taxation requirements, in its State of incorporation and in any other State in which it conducts business.

"(6) MEMBERSHIP.—The development company has at least 25 members (or stockholders if the corporation is a for-profit entity), none of whom may own or control more than 10 percent of the company's voting membership, consisting of representation from each of the following groups (none of which are in a position to control the development company):

"(A) Government organizations that are responsible for economic development.

"(B) Financial institutions that provide commercial long term fixed asset financing.

"(C) Community organizations that are dedicated to economic development.

"(D) Businesses.

"(7) BOARD OF DIRECTORS.—The development company has a board of directors that—

"(A) is elected from the membership by the members;

"(B) represents at least three of the four groups enumerated in subsection (a)(6) and no group is in a position to control the company; and

"(C) meets on a regular basis to make policy decisions for such company.

"(8) PROFESSIONAL MANAGEMENT AND STAFF.—The development company has full-time professional management, including a chief executive officer to manage daily operations, and a full-time professional staff qualified to market the Certified Development Company Economic Development Loan Program and handle all aspects of loan approval and servicing, including liquidation, if appropriate. The development company is required to be independently managed and operated to pursue its economic development mission and to employ its chief executive officer directly, with the following exceptions:

"(A) A development company may be an affiliate of another local non-profit service corporation (specifically excluding another development company) whose mission is to support economic development in the area in which the development company operates. In such a case:

"(i) The development company may satisfy the requirement for full-time professional staff by contracting with a local non-profit service corporation (or one of its non-profit affiliates), or a governmental or quasi-governmental agency, to provide the required staffing.

"(ii) The development company and the local non-profit service corporation may have partially common boards of directors.

"(B) A development company in a rural area (as defined in section 501(f)) shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

"(C) A development company that has been certified by the Administration as of December 31, 2005, and that has contracted with a for-profit company to provide services as of such date may continue to do so.

"(b) AREA OF OPERATIONS.—The Administration shall specify the area in which an applicant is certified to provide assistance to small businesses under this title, which may not initially exceed its State of incorporation unless it proposes to operate in a local economic area which is required to include part of its State of incorporation and may include adjacent areas within several States. After a development company has demonstrated its ability to provide assistance in its area of operations, it may request the Administration to be allowed to operate in one or more additional States as a multi-state certified development company if it satisfies the following criteria:

"(1) Each additional State is contiguous to the State of incorporation, except the States of Alaska and Hawaii shall be deemed to be contiguous to any State abutting the Pacific ocean.

"(2) It demonstrates its proficiency in making and servicing loans under the Certified Development Company Economic Development Loan Program by—

"(A) requesting and receiving designation as an accredited lender under section 507 or a premier certified lender under section 508; and

"(B) meeting or exceeding performance standards established by the Administration.

"(3) The development company adds to the membership of its State of incorporation additional membership from each additional State and the added membership meets the requirements of subsection (a)(6).

"(4) The development company adds at least one member to its board of directors in the State of incorporation, providing that added member was selected by the membership of the development company.

"(5) The company meets such other criteria or complies with such conditions as the Administration deems appropriate.

"(c) PROCESSING OF EXPANSION APPLICATIONS.—The Administration shall respond to the request of a certified development company for certification as a multi-state company on an expedited basis within 30 days of receipt of a completed application if the application demonstrates that the development company meets the requirements of subsection (b)(1) through (b)(4).

"(d) USE OF FUNDS LIMITED TO STATE WHERE GENERATED.—Any funds generated by a development company from making loans under the Certified Development Company Economic Development Loan Program which remain after payment of staff, operating and overhead expenses shall be retained by the development company as a reserve for future operations, for expanding its area of operations in a local economic area as authorized by the Administration, or for investment in other local economic development activity in the State from which the funds were generated.

"(e) ETHICAL REQUIREMENTS.—

"(1) IN GENERAL.—Certified development companies, their officers, employees and other staff, shall at all times act ethically and avoid activities which constitute a conflict of interest or appear to constitute a conflict of interest. No one may serve as an officer, director or chief executive officer of more than one certified development company.

"(2) PROHIBITED CONFLICT IN PROJECT LOANS.—As part of a project under the Certified Development Company Economic Development Loan Program, no certified development company may recommend or approve a guarantee of a debenture by the Administration that is collateralized by a second lien position on the property being constructed or acquired and also provide, or be affiliated with a corporation or other entity, for-profit or non-profit, which provides, financing collateralized by a first lien on the same property. A business development company that was participating as a first mortgage lender, either directly or through an affiliate, for the Certified Development Company Economic Development Loan Program in either fiscal years 2004 or 2005 may continue to do so.

"(3) OTHER ECONOMIC DEVELOPMENT ACTIVITIES.—Operation of multiple programs to assist small business concerns in order for a certified development company to carry out its economic development mission shall not be deemed a conflict of interest, but notwithstanding any other provision of law, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government—

"(A) if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this title; or

"(B) if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title unless the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.".

SEC. 204. DEFINITION OF RURAL AREAS.

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following new subsection:

"(f) As used in subsection (d)(3)(D), the term 'rural' shall include any area other than—

"(1) a city or town that has a population greater than 50,000 inhabitants; and

"(2) the urbanized area contiguous and adjacent to such a city or town.".

SEC. 205. BUSINESSES IN LOW-INCOME AREAS.

Section 501(d)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)) is amended by inserting after "business district revitalization" the following: "or expansion of businesses in low-income communities that would be eligible for new market tax credit investments under section 45D of the Internal Revenue Code of 1986 (26 U.S.C. 45D)".

SEC. 206. COMBINATIONS OF CERTAIN GOALS.

Section 501(e) of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)) is amended by adding at the end the following:

"(7) A small business concern that is unconditionally owned by more than one individual, or a corporation whose stock is owned by more than one individual, is deemed to achieve a public policy goal under subsection (d)(3) if a combined ownership share of at least 51 percent is held by individuals who are in one of the groups listed as public policy goals specified in subsection (d)(3)(C) or (d)(3)(E).".

SEC. 207. REFINANCING.

Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

"(7) PERMISSIBLE DEBT REFINANCING.—Any financing approved under this title may also include a limited amount of debt refinancing for debt that was not previously guaranteed by the Administration. If the project involves expansion of a small business which has existing indebtedness collateralized by fixed assets, any amount of existing indebtedness that does not exceed one-half of the project cost of the expansion may be refinanced and added to the expansion cost, providing—

"(A) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon or to purchase equipment;

"(B) the borrower has been current on all payments due on the existing debt for at least the past year; and

"(C) the financing under the Certified Development Company Economic Development Loan Program will provide better terms or rate of interest than now exists on the debt.".

SEC. 208. ADDITIONAL EQUITY INJECTIONS.

Clause (ii) of section 502(3)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(B)) is amended to read as follows:

"(ii) FUNDING FROM INSTITUTIONS.—

"(I) If a small business concern provides the minimum contribution required under paragraph (C), not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

"(II) If a small business concern provides more than the minimum contribution required under paragraph (C), any excess contribution may be used to reduce the amount required from the institutions described in subclauses (I), (II), and (III) of clause (i) except that the amount from such institutions may not be reduced to an amount less than the amount of the loan made by the Administration.".

SEC. 209. LOAN LIQUIDATIONS.

Section 510 of the Small Business Investment Act of 1958 (15 U.S.C. 697g) is amended—

(1) by redesignating subsection (e) as subsection (g); and

(2) by inserting after subsection (d) the following:

"(e) PARTICIPATION.—

"(1) MANDATORY.—Any certified development company which elects not to apply for authority to foreclose and liquidate defaulted loans under this section or which the Administration determines to be ineligible for such authority shall contract with a qualified third-party to perform foreclosure and liquidation of defaulted loans in its portfolio. The contract shall be contingent upon approval by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

"(2) COMMENCEMENT.—The provisions of this subsection shall not require any development company to liquidate defaulted loans until the Administration has adopted and implemented a program to compensate and reimburse development companies as provided under subsection (f).

"(f) COMPENSATION AND REIMBURSEMENT.—

"(1) REIMBURSEMENT OF EXPENSES.—The Administration shall reimburse each certified development company for all expenses paid by such company as part of the foreclosure and liquidation activities if the expenses—

"(A) were approved in advance by the Administration either specifically or generally; or

"(B) were incurred by the company on an emergency basis without Administration prior approval but which were reasonable and appropriate.

"(2) COMPENSATION FOR RESULTS.—The Administration shall develop a schedule to compensate and provide an incentive to qualified State or local development companies which foreclose and liquidate defaulted loans. The schedule shall be based on a percentage of the net amount recovered but shall not exceed a maximum amount. The schedule shall not apply to any foreclosure which is conducted pursuant to a contract between a development company and a qualified third-party to perform the foreclosure and liquidation.".

SEC. 210. CLOSING COSTS.

Paragraph (4) of section 503(b) of the Small Business Investment Act of 1958 (15 U.S.C. 697(b)) is amended to read as follows:

"(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture plus, at the election of the borrower under the Certified Development Company Economic Development Loan Program, other amounts attributable to the administrative and closing costs of such loans, except for the borrower's attorney fees;".

SEC. 211. MAXIMUM CERTIFIED DEVELOPMENT COMPANY AND 7(A) LOAN ELIGIBILITY.

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended by adding at the end the following:

"(C) COMBINATION FINANCING.—Financing under this title may be provided to a borrower in the maximum amount provided in this subsection, plus a loan guarantee under section 7(a) of the Small Business Act may also be provided to the same borrower in the maximum provided in section 7(a)(3)(A) of such Act.".

SEC. 212. ELIGIBILITY FOR ENERGY EFFICIENCY PROJECTS.

Section 501(d)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

(1) in subparagraph (G) by striking "or" at the end;

(2) in subparagraph (H) by striking the period at the end and inserting ", or"; and

(3) by inserting after subparagraph (H) the following:

"(I) reduction of energy consumption by at least 10 percent.".

SEC. 213. LOANS FOR PLANT PROJECTS USED FOR ENERGY-EFFICIENT PURPOSES.

Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

(1) in clause (ii) by striking "and" at the end;

(2) in clause (iii) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(iv) $4,000,000 for each project that reduces the borrower's energy consumption by at least 10 percent.".

SEC. 214. EXTENSION OF PERIOD DURING WHICH LOSS RESERVES OF PREMIER CERTIFIED LENDERS DETERMINED ON THE BASIS OF OUTSTANDING BALANCE OF DEBENTURES.

Section 508(c)(6)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(c)(6)(B)) is amended by striking "during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph," and inserting "through the end of fiscal year 2008,".

SEC. 215. EXTENSION OF ALTERNATIVE LOSS RESERVE PILOT PROGRAM FOR CERTAIN PREMIER CERTIFIED LENDERS.

Section 508(c)(7)(J) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(c)(7)(J)) is amended by striking "means" and all that follows through the period at the end and inserting "means each calendar quarter through the end of fiscal year 2008."

II. PURPOSE AND SUMMARY

The Small Business Lending Improvements Act of 2007 will update and streamline the SBA's two largest small business finance programs, the 7(a) and 504 programs. The bill will make the 7(a)

program more affordable to borrowers and lenders by providing the SBA with authority to contribute funds for the purpose of reducing the burden associated with borrower and lender fees on 7(a) loans without disturbing the stability that the program currently enjoys under a zero-subsidy policy. The bill will also encourage increased lender participation in the 7(a) program by establishing programs within the 7(a) framework that simplify and streamline the lending process. A rural lender outreach program will reduce the paperwork burden associated with 7(a) loans for lenders located in rural areas.

H.R. 1332 will also make the Community Express Program permanent, providing the SBA with a dedicated program to increase the access to capital for socially and economically disadvantaged small business owners. The bill also adapts the 7(a) program to achieve specific public policy objectives through improved access to the program for medical professionals located in federally designated Health Professional Shortage Areas (HPSAs). The bill will also provide U.S. military veterans with the increased access to capital that they need for their small businesses, which is particularly important as more veterans return from active deployment in Iraq and Afghanistan.

H.R. 1332 will establish a Small Bank Outreach division within the SBA to provide community banks with direct support in their efforts to participate in the 7(a) program and will authorize the SBA to develop a simplified size standard for 7(a) loans modeled on the successful alternative size standard that the agency currently maintains for the 504 program.

The Small Business Lending Improvements Act of 2007 will also make an array of technical changes to the 504 program by modernizing and improving the program by addressing two of the program's most evident problems. The bill will improve the program's ability to liquidate defaulted loans by permitting CDCs to either foreclose and liquidate defaulted loans or to contract with a qualified third party to do so. The bill will also enhance the ties between CDCs and the communities that they serve by requiring CDCs to include community members from their designated areas of operation on their board of directors.

III. Background and Need for Legislation

The 7(a) loan program is the SBA's primary business loan program. It is the agency's largest and most important in terms of number of loans and program level supported. The 7(a) program provides loan guarantees to eligible small businesses that have been unable to obtain financing through the private sector because commercial lenders cannot provide these loans for the purpose, in the amount, or on terms that small business borrowers require.

The program relies on private-sector lenders to provide loans that are, in turn, guaranteed by the SBA. The proceeds from a 7(a) loan may be used for virtually any business purpose including: working capital; acquisition of furniture, fixtures, machinery and equipment, purchase of inventory; construction, renovation, and purchase of real estate. In this manner, the program seeks to make capital more available and more affordable for small business entrepreneurs.

Legislation is required to address several problems in the 7(a) loan program. Steadily increasing borrower and lender fees have made capital less affordable and less accessible for many entrepreneurs. This has been accompanied by a trend of decreased lender participation in the program, particularly among small and rural lenders. If the 7(a) program is to fulfill its mission of making capital affordable and accessible to small businesses, legislation will be necessary to reduce borrower and lender fees, increase lender participation, and open the program to a larger number of individuals.

Since FY 2005, the 7(a) program's costs have been funded through fees levied on the program's borrowers and lenders. Currently, for smaller loans (less than $150,000) guarantee fees are 2 percent of the guaranteed loan amount. For loans between $150,000 and $700,000, 7(a) guarantee fees are 3 percent of the guaranteed loan amount, and for loan amounts greater than $700,000, guarantee fees are 3.5 percent of the guaranteed loan amount. These fees are upfront costs that borrowers pay to acquire the loan. Over the past two years, these borrower fees have doubled for smaller loans and have increased as much as 20 percent for larger loans.

Lender fees have also increased under the 7(a) program. In October 2006, the annual on-going servicing fee for 7(a) loans increased from 0.545 to the statutory maximum of 0.55 percent of the outstanding guaranteed amount of the loan. These fees are ongoing annual fees that lenders pay to the SBA for loan servicing. Although the SBA has proposed lowering the lender fee to 0.494 basis points FY 2008, this fee level is still just short of double the lender fee only four years earlier.

The increase in borrower and lender fees correlates with negative trends in lending volume, average loan size, and program participation among specific groups. For FY 2006, the 7(a) program provided 97,294 7(a) loans in a total amount of $14.5 billion. This represented a 3 percent decline in loan volume from FY 2005. In FY 2006, the average size of a 7(a) loan was $149,300. This represented a 37 percent decline in average loan size from FY 2002 levels when the average size of a 7(a) loan was $236,280. During the same period, the total number loans made under the 7(a) program has more than doubled from 51,610 to 97,294. SBA statistics demonstrate a similar trend in Veteran participation over this same period. From FY 2005 to FY 2006, at a time when more veterans have been returning from active deployment in Iraq and Afghanistan, veteran participation in the 7(a) program has declined by over three hundred loans and $170 million.

The total number of lenders in the 7(a) program has also been steadily declining as the agency has eliminated programs that reduce the application paperwork and loan processing burdens associated with 7(a) loans. The decline in lender participation correlates with a trend of increased lending concentration among a few large lenders. In FY 2006, only 2,267 lenders participated in the 7(a) program. This represented an 18 percent decline from FY 2005 and a 21 percent decline in the number of lenders from FY 2002.

Additionally, 72 percent of the lenders in the 7(a) program made fewer than ten 7(a) loans in FY 2006. By contrast, only 16 lenders—less than one percent of lenders in the program—made more than 1,000 loans. This is consistent with a continuing trend in

lending activity concentration. In FY 2005, one lender accounted for nearly 20 percent of all 7(a) loans. By contrast, 0.2 percent of the lenders account for almost 70 percent of the entire 7(a) program's lending in FY 2005.

In September of 2005, the SBA discontinued the LowDoc program. This has left the 7(a) program without a program focused on reducing the documentation burdens associated with 7(a) lending and encourage greater program participation among smaller lenders. Additionally, the SBA's FY 2008 budget proposal lacks specifics as to how the agency will broaden lender participation in the Community Express program, which serves individuals in low- and moderate-income areas. This program currently exists as a pilot program, and it is unclear if the administration has any intention of making this program permanent.

The 504 Program provides permanent, fixed-rate financing for businesses to acquire industrial or commercial buildings or heavy equipment and machinery. The program is delivered by local Certified Development Companies (CDCs) working in partnership with private lenders and the SBA. Typically, a 504 project includes a loan secured with a senior lien from a private-sector lender covering up to 50 percent of the project cost, a loan secured with a junior lien from the CDC (backed by a 100 percent SBA-guaranteed debenture) covering up to 40 percent of the cost, and a contribution of at least 10 percent equity from the small business being helped.

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

Although the 504 program suffers from fewer problems compared to the 7(a) program, legislation is nonetheless necessary to address two problems in the program. Legislation is required to reinforce the program's traditional principles of economic development and local reinvestment, which have been goals of the program since its inception. In addition, legislation is required to improve the liquidation of defaulted 504 loans, which is essential to minimize the program's costs.

Under current SBA regulations, many CDCs have been able to expand their lending operations into other states or other CDCs' "areas of operation." While this has created more competition in the 504 program between CDCs, it has also undercut the traditional ties between CDCs and the local communities that they were intended to serve. Additionally, this geographic expansion undermines CDC reinvestment in their local communities, which has been at the foundation of the 504 since its inception. Neither of these trends is well monitored by the SBA.

Because 504 functions as a zero-subsidy program, effective liquidation of defaulted loans remain an important consideration. Under a zero-subsidy structure, fees paid by borrowers, lenders, and by CDCs must cover all projected loan losses. The SBA's success in minimizing losses on defaulted loans is vital to keeping fees low. The SBA has centralized the liquidation function for defaulted 504 loans and it is unclear whether SBA district offices have the remaining expertise or staff necessary to perform liquidations on defaulted loans. If fee increases are to be avoided, the SBA must

be able to streamline and improve the 504 program's liquidation capacity.

IV. Hearings

In the 110th Congress, the Committee on Small Business held a hearing on the SBA's 7(a) and 504 financing programs on March 1, 2007. The Committee subsequently held a hearing on H.R. 1332, the Small Business Lending Improvements Act of 2007 on March 8, 2007.

V. Committee Consideration

The Committee on Small Business met in open session on March 15, 2007, and ordered H.R. 1332 reported to the House, as amended, by a voice vote.

VI. Committee Votes

A motion by Ms. Velázquez to report the bill, as amended, to the House with a favorable recommendation was AGREED to by a voice vote.

The following amendment was considered and disposed of by voice vote:

A manager's amendment by Ms. Velázquez, No. 021, was AGREED TO by a voice vote.

The following amendment was offered and withdrawn:

An amendment by Ms. Fallin, No. 002, on a Special Rule for Affiliation of Small Business Concerns, was OFFERED and WITHDRAWN.

VII. Section-by-Section Analysis of H.R. 1332

Title I

Sec. 101 Authority for fee contributions

This provision would permit the SBA to contribute funds for the purpose of reducing the burden associated with borrower and lender fees on loans in the 7(a) program. Fee contributions would be commensurate with an appropriation, if made available, and a specified program level. To ensure that any amounts made available for the purpose of fee contributions are fully used during the fiscal year, contribution amounts should be adjusted quarterly. Although the precise allocation between lender and borrower fees will be within the discretion of the Administrator, the Committee expects that priority will be given to reducing borrower fees if funds are made available for the purpose of fee reductions.

The Committee intends for this provision to make the 7(a) program more affordable to borrowers and lenders by providing the SBA with authority to contribute funds for the purpose of reducing the burden associated with borrower and lender fees on 7(a) loans. The Committee does not believe that the stability that the program currently enjoys under a zero-subsidy policy will be disturbed. The administration will continue to assess and collect the fees necessary to operate the program without an appropriation and subsidy and will continue to calculate the budget estimates and assumptions for the fiscal year just as it currently does to operate the

7(a) program under a zero subsidy framework. The Committee foresees no circumstance in which the program would cease operation or be short of necessary program level to operate at full capacity.

H.R. 1332 simply provides the administration with the authority to contribute funds to reduce the fee burden associated with 7(a) loans if and when an appropriation is made available. In years when no appropriation is made available, the Committee expects the program to function with the stability that the zero-subsidy policy currently provides. In years when a subsidy is made available, borrowers and lenders will enjoy the benefits of reduced fee burdens.

The Committee does not believe that Section 101 is inconsistent with the Federal Credit Reform Act, nor does it believe that it requires the SBA to revise the loan type mix and performance estimates on a quarterly basis. The Federal Credit Reform Act does not require a one-time estimation of loan program costs and assumptions, only that such estimates and assumptions be initially calculated for the current fiscal year. Further, the Federal Credit Reform Act does not prevent subsequent estimates and revisions to assumptions based on changes to the program during the current fiscal year. Consequently, the Committee does not believe that this provision conflicts with provisions of the Federal Credit Reform Act.

Sec. 102 The Rural Lender Outreach Program

This provision would establish a program to encourage increased lender participation in the 7(a) program by reducing application burdens for borrowers and lenders in rural areas to streamline and expedite the lending process on loans with an 85% guarantee on amounts up to $250,000. Loans made under this program would use abbreviated application and documentation requirements and require the SBA to approve or decline the loan within 36 hours.

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

Sec. 103 Make permanent the Community Express program

This provision would make the Community Express pilot program permanent. The program will provide loans to businesses majority owned by women, socially or economically disadvantaged individuals, U.S. military veterans, or businesses located designated in low- and moderate-income areas. Over the past five years, the

SBA has relied on the Community Express pilot program as the primary mechanism for making loans to these groups. The Committee believes that this program must be maintained given the decline in both the number and dollar amount of loans that the SBA has made to these groups. From FY 2005 to FY 2006 alone, the number of 7(a) loans made to women-owned businesses declined 10 percent. During the same time period, the number of 7(a) loans to veteran-owned businesses declined 4 percent.

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

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

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

Sec. 104 Medical professionals in designated shortage areas program

This provision would establish a program to reduce borrower and lender fees by half and increase the guaranty to 90 percent for loans made to doctors and dentists located in Federally designated Health Professional Shortage Areas (HPSAs). The Committee believes that this program, in combination with existing federal assistance programs, will encourage more health professionals to establish their small businesses in HPSAs.

Additionally, this program could be utilized by health professionals located in HPSAs to purchase health information technology (IT) for their small businesses.

Sec. 105 Increased veteran participation program

This provision would establish a program to eliminate borrower and lender fees and increase the guarantee to 90 percent for loans

made to veteran-owned small businesses. The Committee believes that this program will significantly ameliorate the declining numbers of military veterans participating in the 7(a) program, particularly at a time when more veterans are returning from active deployments in Iraq and Afghanistan and are seeking capital for their small businesses.

Sec. 106 Alternative size standard

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

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

Sec. 107 The small bank outreach division

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

The Committee believes that this program will encourage more non-PLP lenders to participate in the 7(a) program.

Title II

Sec. 201 Certified development company economic development loan program

This Section provides that the financing program authorized under Title IV of the Small Business Investment Act of 1958 shall be known as the "Certified Development Company Economic Development Loan Program." The Committee believes that this change will clarify that loans made under section 504 of the Small Business Investment Act of 1958 may be used for the purpose of stimulating community economic development.

Sec. 202 Definitions

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

Sec. 203 Eligibility of development companies to be designated as certified development companies

This provision specifies criteria that a development company must meet in order to issue debentures. A CDC must have fewer than 500 employees and must serve its local community by fostering economic development, creating and preserving jobs, and stimulating private community investment. Except for CDCs certified prior to January 1, 1987, CDCs must operate as not-for-profit entities and must maintain in good standing with all laws, including taxation requirements, in their state of incorporation. This provision will also establish requirements for CDC membership and will require that CDCs be professionally managed and maintain a board of directors that represents its membership.

This provision will require CDCs to maintain a directorate with ties to the states in which it operates and imposes ethical requirements on CDCs and their employees including a prohibition on persons serving as an officer, director or chief executive officer of more than one certified development company. This provision also provides that initially the development company may seek approval only in its State of incorporation and/or a local economic area which may include part of several States. Criteria for subsequent development company expansion require that each additional State be contiguous to the State of incorporation, and require the CDC to add to its membership in the State of incorporation at least 25 members from each additional State, and must add to its board in the State of incorporation at least one member from each additional State.

The Committee intends for these requirements to reinforce CDCs' traditional role in community development and local reinvestment. The Committee believes that many of these requirements are already established by SBA policies and procedures for the 504 program and that most CDCs currently in operation will already meet these standards.

Sec. 204 Definition of rural areas

This provision updates the definition of a rural area to any area except a city or town with a population greater than 50,000 inhabitants or the urbanized area contiguous and adjacent to any such a city or town. The Committee believes that this change is necessary to make the SBA's definition of rural areas consistent with the definition recently enacted in loan programs administered by the U.S. Department of Agriculture.

Sec. 205 Businesses in low-income areas

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

Sec. 206 Combination of certain goals

This provision will allow the ownership interest of two or more owners to be combined to determine whether the small business is at least 51 percent owned by minorities, women or veterans in

order to qualify for assistance as a public policy goal. The Committee believes that this change is consistent with the 504 program's existing provision which permits small businesses to qualify as a public policy goal for 504 program financing by majority ownership of a single woman, minority, or veteran.

Sec. 207 Refinancing

This provision will permit a borrower to refinance a limited amount of existing indebtedness secured by a current mortgage on the property being expanded by the 504 project. The amount which could be refinanced would be limited to an amount not to exceed 50 percent of the expansion project and would be limited to situations where the 504 financing will provide better terms or interest rates than currently exists on the debt.

The Committee does not intend for this provision to permit the refinancing of poorly performing debt into the 504 program. Consequently Section 207 expressly requires that the borrower be current on all payments due on the existing debt for at least a year preceding the refinancing. Additionally, the Committee believes that refinancing should be limited solely to amounts that a private sector lender would be unlikely to refinance on a stand alone basis. For this reason, Section 207 is limited to situations where the 504 financing will provide better terms or interest rates than currently existing on the debt.

Sec. 208 Additional equity injections

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

Sec. 209 Loan liquidations

This provision will require a CDC either to foreclose and liquidate defaulted loans which it made or to contract with a qualified third-party to do so. This provision also imposes a requirement that SBA reimburse a CDC for all expenses incurred by the CDC if the expenses were approved by SBA in advance or were reasonable. The requirement will not be effective, however, until the SBA adopts and implements a program to compensate and reimburse the CDC for expenses associated with foreclosure and liquidation.

Because the 504 program operates as a zero subsidy program, the Committee believes it is essential that defaulted loans be liquidated and recovered in an effectively and timely manner. The Committee intends for Section 209 to strengthen the 504 program by permitting CDCs to play an active role in ensuring that defaulted 504 loans are liquidated in an efficient manner.

Sec. 210 Closing costs

This provision will provide borrowers in the 504 program the option to include loan and debenture closing costs, other than borrower's attorney fees, in the debenture. The Committee believes that this provision will improve efficiency and convenience in the 504 program and result in increased participation in the program.

Sec. 211 Maximum 504 and 7(A) loan eligibility

This provision will permit a 504 borrower to obtain financing in the maximum amount permitted under the 504 program and also to obtain a 7(a) loan in the maximum amount permitted under that program.

The Committee believes that this provision will provide entrepreneurs with increased access to affordable capital in amounts necessary to support capital intensive small businesses. The Committee believes that this is consistent with the express purpose of the 7(a) and 504 programs and that no existing SBA program can adequately fulfill this role by itself.

Sec. 212 Eligibility for energy efficiency projects

This provision permits energy efficiency projects that reduce the borrower's energy consumption by at least 10 percent, to qualify as a public policy goal under the 504 program. The Committee believes that encouraging energy efficiency is consistent with the purpose of the 504 program.

Sec. 213 Loans for plant projects used for energy-efficient purposes

This provision permits energy efficient projects that reduce a borrower's energy consumption by 10 percent to be eligible for the $4,000,000 debenture. The Committee believes that encouraging energy efficiency is consistent with the purpose of the 504 program.

Sec. 214 Extension of period during which loss reserves of premier certified lenders determined on the basis of outstanding balance of debentures

This provision will extend through fiscal year 2008 current law that permits CDCs to base their loan loss reserves on the outstanding balance of debentures.

Sec. 215 Extension of alternative loss reserve pilot program for certain premier certified lenders

This provision will extend current law through fiscal year 2008 that permits CDCs to use an alternative risk-based methodology to calculate their loan loss reserves. In PL 108–232, the SBA was required to conduct a study and report to Congress on the extent that statutory requirements have caused an overcapitalization in loan loss reserve requirements and to evaluate alternative loan loss reserve methodologies, similar to those extended in Sections 214 and 215 of this Act. The Committee is concerned that the SBA has not submitted the study and report as required by PL 108–232.

VIII. Congressional Budget Office Cost Estimate

April 20, 2007.

Hon. Nydia M. Velázquez,
Chairwoman, Committee on Small Business,
House of Representatives, Washington, DC.

Dear Madam Chairwoman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1332, the Small Business Lending Improvements Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

Peter R. Orszag.

Enclosure.

H.R. 1332—Small Business Lending Improvements Act of 2007

Summary: H.R. 1332 would make a number of amendments to loan programs administered by the Small Business Administration (SBA). The bill would specifically authorize SBA to use appropriated funds in lieu of charging borrower and lender fees to cover the cost of 7(a) loan guarantees, to the extent that such funds are made available. The bill also would ease financial requirements for individuals in targeted groups to participate in the 7(a) loan guarantee program and expand eligibility for loans under the 504 loan program, which guarantees debentures issued by intermediaries to provide funding for major fixed assets.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1332 would cost $316 million in 2008 and $2.3 billion over the 2008–2012 period. CBO estimates that enacting the bill would not affect revenues and would have no significant effect on direct spending.

H.R. 1332 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1332 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION					
Elimination of 7(a) Loan Fees:					
Estimated Authorization level	470	480	500	510	520
Estimated Outlays	305	460	490	500	510
Easing Requirements for 7(a) Loans:					
Estimated Authorization level	9	9	10	10	10
Estimated Outlays	6	9	9	10	10
Easing Requirements for 7(a) Loans for Veterans:					
Estimated Authorization level	7	7	7	8	8
Estimated Outlays	5	7	7	7	8
Total:					
Estimated Authorization level	486	496	517	528	538
Estimated Outlays	316	476	506	517	528

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in 2007 and that the necessary amounts will be appropriated near the start of each year.

The budgetary accounting for SBA's loan guarantee programs is governed by the Federal Credit Reform Act (FCRA) of 1990, which requires an appropriation of subsidy and administrative costs associated with loan guarantees and loan operations. The subsidy cost is the estimated long-term cost to the government of a loan guarantee, calculated on a net-present-value basis, excluding administrative costs. Administrative costs, recorded on a cash basis, include activities related to making, servicing, and liquidating loans, as well as overseeing the performance of lenders.

The budgetary impact of the changes H.R. 1332 would make to SBA's business loan programs is measured in terms of projected subsidy costs. The bill does not specify an authorization level for either the subsidy or administrative costs, if any, that could be incurred as a result of implementing the amendments in the bill. CBO has estimated those amounts based on information from the SBA regarding the historical demand for and costs of the agency's business loan programs.

Spending subject to appropriation

Section 101 would authorize SBA to use appropriated funds rather than charging certain fees on loans guaranteed under the 7(a) program to cover the program's cost. Under current law, SBA must adjust fees charged to both borrowers and lenders to produce an estimated subsidy rate of zero at the time the loans are guaranteed.

Based on historical demand for 7(a) loans and assuming a small increase in demand as a result of the lower cost to borrowers, CBO estimates loan volume for fiscal year 2008 would be about $14 billion. The projected subsidy rate on the 7(a) program for 2008, in the absence of fee collections, would be about 3.4 percent of the loan principle guaranteed. Assuming that loan volume would grow with inflation in subsequent years and that the necessary sums would be appropriated each year, additional outlays would total $305 million in 2008 and $2.3 billion over the 2008–2012 period, CBO estimates.

Title I also would ease the financial requirements for individuals in certain groups to receive loan guarantees under the 7(a) program. Those affected would include borrowers in rural and low- and moderate-income areas, certain medical professionals, and veterans. Under the bill, the targeted groups would receive higher loan guarantees from SBA, pay lower fees, or both.

Based on information from SBA, CBO estimates that creating programs targeted at medical professionals and veterans within the 7(a) program would increase the overall subsidy rate by about five basis points, each with the elimination of the fees discussed above. The programs proposed for rural and low- and moderate-income borrowers would not affect the subsidy rate. CBO estimates that the new targeted programs would cost $11 million in 2008 and $77 million over the 2008–2012 period.

Title II would make changes to SBA's 504 program, renamed the community development corporation economic development loan program under the bill. That program guarantees debentures issued by community development corporations (CDCs) to provide

funding for investments in major fixed assets, including land, structures, machinery, and equipment. H.R. 1332 would expand the number of CDCs eligible to issue debentures, broaden the purposes for which loan proceeds may be used, and allow CDCs to contract with third parties to foreclose and liquidate defaulted loans.

As for the 7(a) program, SBA must set an annual fee on such loans to produce an estimated subsidy rate of zero at the time the loans are guaranteed. Based on information from SBA, CBO estimates that the amendments to the 504 loan program in H.R. 1332 would not affect the subsidy rate, and therefore would have no cost.

Direct spending

SBA's Premier Certified Lenders Program gives a CDC participating in the 504 program the authority to review and approve loan requests and to foreclose, litigate, and liquidate loans made under the program. Under current law, CDCs can qualify as Premier Certified Lenders (PCLs) if, among other requirements, they agree to pay 10 percent of SBA's potential loss on a defaulted 504 loan. A PCL must hold 10 percent of this potential loss (i.e., 1 percent of the total loan) in a reserve for the life of the loan.

H.R. 1332 would reinstate a program that allows PCLs to maintain a lower loss reserve equal to 1 percent of the total loan outstanding. PCLs would be allowed to withdraw any funds from their loss reserve in excess of this amount. In addition, the bill would reinstate the option for certain PCLs to maintain an alternate loss reserve level based on risk rather than a fixed percentage. The amount of the reserve would be determined by an independent, SBA-approved auditor. Under the program, if a PCL chooses this option, it must pay 15 percent of SBA's total loss on defaulted CDC loans. Both loss reserve programs expired in 2006; under the bill, these provisions would be extended through the end of fiscal year 2008.

Enacting these provisions of H.R. 1332 could affect the subsidy rates for previous cohorts of CDC loans. Decreasing the loss reserve requirement for PCLs would cause SBA to collect a smaller amount of recoveries if a small business defaults on a loan and a PCL is unable to pay its portion of SBA's total loss. However, increasing the required loss coverage to 15 percent for PCLs that opt to maintain a loss reserve level based on risk would increase SBA's recoveries on defaulted CDC loans. CBO estimates that those two effects would not have a significant net impact on the subsidy cost of outstanding loans.

Intergovernmental and private-sector impact: H.R. 1332 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susan Willie. Impact on State, Local, and Tribal Governments: Theresa Gullo. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

IX. Committee Estimate of Costs

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Com-

mittee of the costs that would be incurred in carrying out H.R. 1332. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

X. Oversight Findings

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 1332 are incorporated into the descriptive portions of this report.

XI. Statement of Constitutional Authority

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

XII. Compliance With Public Law 104–4

H.R. 1332 contains no unfunded mandates.

XIII. Congressional Accountability Act

H.R. 1332 does not relate to the terms and conditions of employment or access to public services or accommodations with the meaning of section 102(b)(3) of P.L. 104–1.

XIV. Federal Advisory Committee Statement

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

XV. Statement of No Earmarks

Pursuant to clause 9 of rule XXI, H.R. 1332 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

XVI. Performance Goals and Objectives

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

H.R. 1332 includes a number of provisions designed to update and improve the Small Business Administration's 7(a) and 504 programs.

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

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

SMALL BUSINESS ACT

* * * * * * *

SEC. 3.(a)(1) * * *

* * * * * * *

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

* * * * * * *

SEC. 7. (a) LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) * * *

* * * * * * *

(18) GUARANTEE FEES.—

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

(i) * * *

* * * * * * *

(C) OFFSET.—The Administrator may, as provided in paragraph (32), offset fees assessed and collected under subparagraph (A).

* * * * * * *

(23) YEARLY FEE.—

(A) * * *

* * * * * * *

[(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

[(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

[(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.]

(C) OFFSET.—The Administrator may, as provided in paragraph (32), offset fees assessed and collected under subparagraph (A).

* * * * * * *

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) * * *

* * * * * * *

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

* * * * * * *

(32) FEE CONTRIBUTIONS.—

(A) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall—

(i) first consider contributing to fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) then consider contributing to fees paid by small business lenders under paragraph (23)(A).

(B) QUARTERLY ADJUSTMENT.—Each fee contribution under subparagraph (A) shall be effective for one fiscal quarter and shall be adjusted as necessary for each fiscal quarter thereafter to ensure that the amounts under subparagraph (A) are fully used. The fee contribution for a fiscal quarter shall be based on the loans that the Administrator projects will be made during that fiscal quarter, given the program level authorized by law for that fiscal year and any other factors that the Administrator considers appropriate.

(33) RURAL LENDING OUTREACH PROGRAM.—The Administrator shall carry out a rural lending outreach program to provide up to an 85 percent guaranty for loans of $250,000 or less. The program shall be carried out only through lenders located in rural areas (as "rural" is defined in section 501(f) of the Small Business Investment Act of 1958). For a loan made through the program, the following shall apply:

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

(B) The program shall use abbreviated application and documentation requirements.

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

(34) COMMUNITY EXPRESS PROGRAM.—The Administrator shall carry out a Community Express Program for loans of $250,000 or less. For a loan made under this paragraph, the following shall apply:

(A) The loan shall be made to a business concern—

(i) the majority ownership interest of which is directly held by individuals who are women, socially or economically disadvantaged individuals (as defined by the Administrator), or veterans of the Armed Forces; or

(ii) that is located in a low- or moderate-income area, as defined by the Administrator.

(B) The loan shall comply with the collateral policy of the Administration, except that, if the amount of the loan is less than or equal to $25,000, the Administration shall not require the lender to take collateral.

(C) The loan shall include terms requiring the lender to ensure that technical assistance is provided to the borrower, through the lender or a third-party provider.

(D) The Administration shall approve or disapprove the loan within 36 hours.

(35) MEDICAL PROFESSIONALS IN DESIGNATED SHORTAGE AREAS PROGRAM.—The Administrator shall carry out a Medical Professionals in Designated Shortage Areas Program. For a loan made under this paragraph, the following shall apply:

(A) The loan shall be made to a business concern that provides properly licensed medical, dental, or psychiatric services to the public.

(B) The loan shall be for the purpose of opening a business concern in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

(C) The loan shall include the participation by the Administration equal to 90 percent of the balance of the financing outstanding at the time of disbursement.

(D) The fees on the loan under paragraphs (18) and (23) shall be reduced by half.

(36) INCREASED VETERAN PARTICIPATION PROGRAM.—The Administrator shall carry out an Increased Veteran Participation Program. For a loan made under this paragraph, the following shall apply:

(A) The loan shall be made to a business concern the majority ownership interest of which is directly held by individuals who are veterans of the Armed Forces.

(B) The loan shall include the participation by the Administration equal to 90 percent of the balance of the financing outstanding at the time of disbursement.

(C) The fees on the loan under paragraphs (18) and (23) shall not apply.

(37) SUPPORT TO REGIONAL OFFICES.—The Administrator shall carry out a program, within an element of the Administration already in existence as of the date of the enactment of the Small Business Lending Improvements Act of 2007, to provide support to regional offices of the Administration in assist-

ing small lenders who do not participate in the preferred lender program to participate in the 7(a) program.

* * * * * * *

SMALL BUSINESS INVESTMENT ACT OF 1958

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

* * * * * * *

DEFINITIONS

SEC. 103. As used in this Act—

(1) * * *

* * * * * * *

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

(6) the term "development company" means an entity incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas in which it is authorized to operate by the Administration, and the term "certified development company" means a development company which the Administration has determined meets the criteria of section 506;

* * * * * * *

TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

STATE DEVELOPMENT COMPANIES

SEC. 501. (a) * * *

* * * * * * *

(d) In order to qualify for assistance under this title, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

(1) * * *

* * * * * * *

(3) the achievement of one or more of the following public policy goals:

(A) business district revitalization *or expansion of businesses in low-income communities that would be eligible for new market tax credit investments under section 45D of the Internal Revenue Code of 1986 (26 U.S.C. 45D)*,

* * * * * * *

(G) changes necessitated by Federal budget cutbacks, including defense related industries, [or]

(H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees**[**.**]***, or*

(I) reduction of energy consumption by at least 10 percent.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e)(1) * * *

* * * * * * *

(7) A small business concern that is unconditionally owned by more than one individual, or a corporation whose stock is owned by more than one individual, is deemed to achieve a public policy goal under subsection (d)(3) if a combined ownership share of at least 51 percent is held by individuals who are in one of the groups listed as public policy goals specified in subsection (d)(3)(C) or (d)(3)(E).

(f) As used in subsection (d)(3)(D), the term "rural" shall include any area other than—

(1) a city or town that has a population greater than 50,000 inhabitants; and

(2) the urbanized area contiguous and adjacent to such a city or town.

LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION

SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however,* That the foregoing powers shall be subject to the following restrictions and limitations:

(1) * * *

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) * * *

(ii) $2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); **[**and**]**

(iii) $4,000,000 for each project of a small manufacturer**[**.**]***; and*

(iv) $4,000,000 for each project that reduces the borrower's energy consumption by at least 10 percent.

* * * * * * *

(C) COMBINATION FINANCING.—Financing under this title may be provided to a borrower in the maximum amount provided in this subsection, plus a loan guarantee under section 7(a) of the Small Business Act may also be provided

to the same borrower in the maximum provided in section 7(a)(3)(A) of such Act.

(3) CRITERIA FOR ASSISTANCE.—

(A) * * *

(B) COMMUNITY INJECTION FUNDS.—

(i) * * *

[(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).]

(ii) FUNDING FROM INSTITUTIONS.—

(I) If a small business concern provides the minimum contribution required under paragraph (C), not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(II) If a small business concern provides more than the minimum contribution required under paragraph (C), any excess contribution may be used to reduce the amount required from the institutions described in subclauses (I), (II), and (III) of clause (i) except that the amount from such institutions may not be reduced to an amount less than the amount of the loan made by the Administration.

* * * * * * *

(7) PERMISSIBLE DEBT REFINANCING.—Any financing approved under this title may also include a limited amount of debt refinancing for debt that was not previously guaranteed by the Administration. If the project involves expansion of a small business which has existing indebtedness collateralized by fixed assets, any amount of existing indebtedness that does not exceed one-half of the project cost of the expansion may be refinanced and added to the expansion cost, providing—

(A) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon or to purchase equipment;

(B) the borrower has been current on all payments due on the existing debt for at least the past year; and

(C) the financing under the Certified Development Company Economic Development Loan Program will provide better terms or rate of interest than now exists on the debt.

DEVELOPMENT COMPANY DEBENTURES

SEC. 503. (a) * * *

(b) No guarantee may be made with respect to any debenture under subsection (a) unless—

(1) * * *

* * * * * * *

[(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such de-

benture (other than any excess attributable to the administrative costs of such loans);]

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture plus, at the election of the borrower under the Certified Development Company Economic Development Loan Program, other amounts attributable to the administrative and closing costs of such loans, except for the borrower's attorney fees;

* * * * * * *

PRIVATE DEBENTURE SALES

SEC. 504. *(a) The program to provide financing to small businesses by guarantees of loans under this Act which are funded by debentures guaranteed by the Administration may be known as the "Certified Development Company Economic Development Loan Program".*

[(a)] *(b)* Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 503 of this title as follows:

(1) * * *

* * * * * * *

[(b)] *(c)* Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) * * *

* * * * * * *

[RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE

[SEC. 506. Notwithstanding any other provisions of law: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this title or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this title nor shall it include any condition or impose any requirement, directly or indirectly upon any recipient of assistance under this title: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.]

SEC. 506. CERTIFIED DEVELOPMENT COMPANIES.

(a) AUTHORITY TO ISSUE DEBENTURES.—A development company may issue debentures pursuant to this Act if the Administration certifies that the company meets the following criteria:

(1) SIZE.—The development company is required to be a small concern with fewer than 500 employees and not under the control of any entity which does not meet the Administration's size standards as a small business, except that any development company which was certified by the Administration prior to December 31, 2005 may continue to issue debentures.

(2) PURPOSE.—The primary purpose of the development company is to benefit the community by fostering economic development to create and preserve jobs and stimulate private investment.

(3) PRIMARY FUNCTION.—The primary function of the development company is to accomplish its purpose by providing long term financing to small businesses by the utilization of the Certified Development Company Economic Development Loan Program. It may also provide or support such other local economic development activities to assist the community.

(4) NON-PROFIT STATUS.—The development company is a non-profit corporation, except that a development company certified by the Administration prior to January 1, 1987, may retain its status as a for-profit corporation.

(5) GOOD STANDING.—The development company is in good standing in its State of incorporation and in any other State in which it conducts business, and is in compliance with all laws, including taxation requirements, in its State of incorporation and in any other State in which it conducts business.

(6) MEMBERSHIP.—The development company has at least 25 members (or stockholders if the corporation is a for-profit entity), none of whom may own or control more than 10 percent of the company's voting membership, consisting of representation from each of the following groups (none of which are in a position to control the development company):

(A) Government organizations that are responsible for economic development.

(B) Financial institutions that provide commercial long term fixed asset financing.

(C) Community organizations that are dedicated to economic development.

(D) Businesses.

(7) BOARD OF DIRECTORS.—The development company has a board of directors that—

(A) is elected from the membership by the members;

(B) represents at least three of the four groups enumerated in subsection (a)(6) and no group is in a position to control the company; and

(C) meets on a regular basis to make policy decisions for such company.

(8) PROFESSIONAL MANAGEMENT AND STAFF.—The development company has full-time professional management, including a chief executive officer to manage daily operations, and a full-time professional staff qualified to market the Certified Development Company Economic Development Loan Program and handle all aspects of loan approval and servicing, including liquidation, if appropriate. The development company is required to be independently managed and operated to pursue its economic development mission and to employ its chief executive officer directly, with the following exceptions:

(A) A development company may be an affiliate of another local non-profit service corporation (specifically excluding another development company) whose mission is to support economic development in the area in which the development company operates. In such a case:

(i) The development company may satisfy the requirement for full-time professional staff by contracting with a local non-profit service corporation (or one of its non-profit affiliates), or a governmental or quasi-governmental agency, to provide the required staffing.

(ii) The development company and the local non-profit service corporation may have partially common boards of directors.

(B) A development company in a rural area (as defined in section 501(f)) shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(C) A development company that has been certified by the Administration as of December 31, 2005, and that has contracted with a for-profit company to provide services as of such date may continue to do so.

(b) AREA OF OPERATIONS.—The Administration shall specify the area in which an applicant is certified to provide assistance to small businesses under this title, which may not initially exceed its State of incorporation unless it proposes to operate in a local economic area which is required to include part of its State of incorporation and may include adjacent areas within several States. After a development company has demonstrated its ability to provide assistance in its area of operations, it may request the Administration to be allowed to operate in one or more additional States as a multistate certified development company if it satisfies the following criteria:

(1) Each additional State is contiguous to the State of incorporation, except the States of Alaska and Hawaii shall be deemed to be contiguous to any State abutting the Pacific ocean.

(2) It demonstrates its proficiency in making and servicing loans under the Certified Development Company Economic Development Loan Program by—

(A) requesting and receiving designation as an accredited lender under section 507 or a premier certified lender under section 508; and

(B) meeting or exceeding performance standards established by the Administration.

(3) The development company adds to the membership of its State of incorporation additional membership from each additional State and the added membership meets the requirements of subsection (a)(6).

(4) The development company adds at least one member to its board of directors in the State of incorporation, providing that added member was selected by the membership of the development company.

(5) The company meets such other criteria or complies with such conditions as the Administration deems appropriate.

(c) PROCESSING OF EXPANSION APPLICATIONS.—The Administration shall respond to the request of a certified development company for certification as a multi-state company on an expedited basis within 30 days of receipt of a completed application if the application demonstrates that the development company meets the requirements of subsection (b)(1) through (b)(4).

(d) USE OF FUNDS LIMITED TO STATE WHERE GENERATED.—Any funds generated by a development company from making loans under the Certified Development Company Economic Development Loan Program which remain after payment of staff, operating and overhead expenses shall be retained by the development company as a reserve for future operations, for expanding its area of operations in a local economic area as authorized by the Administration, or for investment in other local economic development activity in the State from which the funds were generated.

(e) ETHICAL REQUIREMENTS.—

(1) IN GENERAL.—Certified development companies, their officers, employees and other staff, shall at all times act ethically and avoid activities which constitute a conflict of interest or appear to constitute a conflict of interest. No one may serve as an officer, director or chief executive officer of more than one certified development company.

(2) PROHIBITED CONFLICT IN PROJECT LOANS.—As part of a project under the Certified Development Company Economic Development Loan Program, no certified development company may recommend or approve a guarantee of a debenture by the Administration that is collateralized by a second lien position on the property being constructed or acquired and also provide, or be affiliated with a corporation or other entity, for-profit or non-profit, which provides, financing collateralized by a first lien on the same property. A business development company that was participating as a first mortgage lender, either directly or through an affiliate, for the Certified Development Company Economic Development Loan Program in either fiscal years 2004 or 2005 may continue to do so.

(3) OTHER ECONOMIC DEVELOPMENT ACTIVITIES.—Operation of multiple programs to assist small business concerns in order for a certified development company to carry out its economic development mission shall not be deemed a conflict of interest, but notwithstanding any other provision of law, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government—

(A) if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this title; or

(B) if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title unless the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such

conditions, priorities or restrictions are limited solely to the financial assistance so provided.

* * * * * * *

SEC. 508. PREMIER CERTIFIED LENDERS PROGRAM.

(a) * * *

* * * * * * *

(c) LOSS RESERVE.—

(1) * * *

* * * * * * *

(6) DISBURSEMENTS.—

(A) * * *

(B) TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.—Notwithstanding subparagraph (A), [during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph,] *through the end of fiscal year 2008,* the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) ALTERNATIVE LOSS RESERVE.—

(A) * * *

* * * * * * *

(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term "eligible calendar quarter" [means—

[(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

[(ii) the 7 succeeding calendar quarters.] *means each calendar quarter through the end of fiscal year 2008.*

* * * * * * *

SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.

(a) * * *

* * * * * * *

(e) PARTICIPATION.—

(1) MANDATORY.—Any certified development company which elects not to apply for authority to foreclose and liquidate defaulted loans under this section or which the Administration determines to be ineligible for such authority shall contract with a qualified third-party to perform foreclosure and liquidation of defaulted loans in its portfolio. The contract shall be contingent upon approval by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) COMMENCEMENT.—The provisions of this subsection shall not require any development company to liquidate defaulted loans until the Administration has adopted and implemented a

program to compensate and reimburse development companies as provided under subsection (f).

(f) COMPENSATION AND REIMBURSEMENT.—

(1) REIMBURSEMENT OF EXPENSES.—The Administration shall reimburse each certified development company for all expenses paid by such company as part of the foreclosure and liquidation activities if the expenses—

(A) were approved in advance by the Administration either specifically or generally; or

(B) were incurred by the company on an emergency basis without Administration prior approval but which were reasonable and appropriate.

(2) COMPENSATION FOR RESULTS.—The Administration shall develop a schedule to compensate and provide an incentive to qualified State or local development companies which foreclose and liquidate defaulted loans. The schedule shall be based on a percentage of the net amount recovered but shall not exceed a maximum amount. The schedule shall not apply to any foreclosure which is conducted pursuant to a contract between a development company and a qualified third-party to perform the foreclosure and liquidation.

[(e)] *(g)* REPORT.—

(1) * * *

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