

AMERICA'S PRIVATE INVESTMENT COMPANIES ACT

MAY 23, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2764]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 2764) to license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "America's Private Investment Companies Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds that—

(1) people living in distressed areas, both urban and rural, that are characterized by high levels of joblessness, poverty, and low incomes have not benefited adequately from the economic expansion experienced by the Nation as a whole;

(2) unequal access to economic opportunities continues to make the social costs of joblessness and poverty to our Nation very high; and

(3) there are significant untapped markets in our Nation, and many of these are in areas that are underserved by institutions that can make equity and credit investments.

(b) **PURPOSES.**—The purposes of this Act are to—

(1) license private for profit community development entities that will focus on making equity and credit investments for large-scale business developments that benefit low-income communities;

(2) provide credit enhancement for those entities for use in low-income communities; and

(3) provide a vehicle under which the economic and social returns on financial investments made pursuant to this Act may be available both to the investors in these entities and to the residents of the low-income communities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration.

(2) AGENCY.—The term “agency” has the meaning given such term in section 551(1) of title 5, United States Code.

(3) APIC.—The term “APIC” means a business entity that has been licensed under the terms of this Act as an America’s Private Investment Company, and the license of which has not been revoked.

(4) COMMUNITY DEVELOPMENT ENTITY.—The term “community development entity” means an entity the primary mission of which is serving or providing investment capital for low-income communities or low-income persons and which maintains accountability to residents of low-income communities.

(5) HUD.—The term “HUD” means the Secretary of Housing and Urban Development or the Department of Housing and Urban Development, as the context requires.

(6) LICENSE.—The term “license” means a license issued by HUD as provided in section 4.

(7) LOW-INCOME COMMUNITY.—The term “low-income community” means—

(A) a census tract or tracts that have—

(i) a poverty rate of 20 percent or greater, based on the most recent census data; or

(ii) a median family income that does not exceed 80 percent of the greater of (I) the median family income for the metropolitan area in which such census tract or tracts are located, or (II) the median family income for the State in which such census tract or tracts are located; or

(B) a property that was located on a military installation that was closed or realigned pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), section 2687 of title 10, United States Code, or any other similar law enacted after the date of the enactment of this Act that provides for closure or realignment of military installations.

(8) LOW-INCOME PERSON.—The term “low-income person” means a person who is a member of a low-income family, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704).

(9) PRIVATE EQUITY CAPITAL.—

(A) IN GENERAL.—The term “private equity capital”—

(i) in the case of a corporate entity, the paid-in capital and paid-in surplus of the corporate entity;

(ii) in the case of a partnership entity, the contributed capital of the partners of the partnership entity;

(iii) in the case of a limited liability company entity, the equity investment of the members of the limited liability company entity; and

(iv) earnings from investments of the entity that are not distributed to investors and are available for reinvestment by the entity.

(B) EXCLUSIONS.—Such term does not include any—

(i) funds borrowed by an entity from any source or obtained through the issuance of leverage; except that this clause may not be construed to exclude amounts evidenced by a legally binding and irrevocable investment commitment in the entity, or the use by an entity of a pledge of such investment commitment to obtain bridge financing from a private lender to fund the entity’s activities on an interim basis; or

(ii) funds obtained directly or indirectly from any Federal, State, or local government or any government agency, except for—

(I) funds invested by an employee welfare benefit plan or pension plan; and

(II) credits against any Federal, State, or local taxes.

(10) QUALIFIED ACTIVE BUSINESS.—The term “qualified active business” means a business or trade—

(A) that, at the time that an investment is made in the business or trade, is deriving at least 50 percent of its gross income from the conduct of trade or business activities in low-income communities;

(B) a substantial portion of the use of the tangible property of which is used within low-income communities;

(C) a substantial portion of the services that the employees of which perform are performed in low-income communities; and

(D) less than 5 percent of the aggregate unadjusted bases of the property of which is attributable to certain financial property, as the Secretary shall set forth in regulations, or in collectibles, other than collectibles held primarily for sale to customers.

(11) **QUALIFIED DEBENTURE.**—The term “qualified debenture” means a debt instrument having terms that meet the requirements established pursuant to section 6(c)(1).

(12) **QUALIFIED LOW-INCOME COMMUNITY INVESTMENT.**—The term “qualified low-income community investment” mean an equity investment in, or a loan to, a qualified active business.

(13) **SECRETARY.**—The term “Secretary” means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

SEC. 4. AUTHORIZATION.

(a) **LICENSES.**—The Secretary is authorized to license community development entities as America’s Private Investment Companies, in accordance with the terms of this Act.

(b) **REGULATIONS.**—The Secretary shall regulate APICs for compliance with sound financial management practices, and the program and procedural goals of this and other related Acts, and other purposes as required or authorized by this Act, or determined by the Secretary. The Secretary shall issue such regulations as are necessary to carry out the licensing and regulatory and other duties under this Act, and may issue notices and other guidance or directives as the Secretary determines are appropriate to carry out such duties.

(c) **USE OF CREDIT SUBSIDY FOR LICENSES.**—

(1) **NUMBER OF LICENSES.**—The number of APICs licensed at any one time may not exceed—

(A) the number that may be supported by the amount of budget authority appropriated in accordance with section 504(b) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c) for the cost (as such term is defined in section 502 of such Act) of the subsidy and the investment strategies of such APICs; or

(B) to the extent the limitation under section 5(e)(1) applies, the number authorized under such section.

(2) **USE OF ADDITIONAL CREDIT SUBSIDY.**—Subject to the limitation under paragraph (1), the Secretary may use any budget authority available after credit subsidy has been allocated for the APICs initially licensed pursuant to section 5 as follows:

(A) **ADDITIONAL LICENSES.**—To license additional APICs.

(B) **CREDIT SUBSIDY INCREASES.**—To increase the credit subsidy allocated to an APIC as an award for high performance under this Act, except that such increases may be made only in accordance with the following requirements and limitations:

(i) **TIMING.**—An increase may only be provided for an APIC that has been licensed for a period of not less than 2 years.

(ii) **COMPETITION.**—An increase may only be provided for a fiscal year pursuant to a competition for such fiscal year among APICs eligible for, and requesting, such an increase. The competition shall be based upon criteria that the Secretary shall establish, which shall include the financial soundness and performance of the APICs, as measured by achievement of the public performance goals included in the APICs statements required under section 5(a)(6) and audits conducted under section 9(b)(2). Among the criteria established by the Secretary to determine priority for selection under this section, the Secretary shall include making investments in and loans to qualified active businesses in urban or rural areas that have been designated under subchapter U of Chapter 1 of the Internal Revenue Code of 1986 as empowerment zones or enterprise communities.

(d) **COOPERATION AND COORDINATION.**—

(1) **PROGRAM POLICIES.**—The Secretary is authorized to coordinate and cooperate, through memoranda of understanding, an APIC liaison committee, or otherwise, with the Administrator, the Secretary of the Treasury, and other agencies

in the discretion of the Secretary, on implementation of this Act, including regulation, examination, and monitoring of APICs under this Act.

(2) **FINANCIAL SOUNDNESS REQUIREMENTS.**—The Secretary shall consult with the Administrator and the Secretary of the Treasury, and may consult with such other heads of agencies as the Secretary may consider appropriate, in establishing any regulations, requirements, guidelines, or standards for financial soundness or management practices of APICs or entities applying for licensing as APICs. In implementing and monitoring compliance with any such regulations, requirements, guidelines, and standards, the Secretary shall enter into such agreements and memoranda of understanding with the Administrator and the Secretary of the Treasury as may be appropriate to provide for such officials to provide any assistance that may be agreed to.

(3) **OPERATIONS.**—The Secretary may carry out this Act—

(A) directly, through agreements with other Federal entities under section 1535 of title 31, United States Code, or otherwise, or

(B) indirectly, under contracts or agreements, as the Secretary shall determine.

(e) **FEES AND CHARGES FOR ADMINISTRATIVE COSTS.**—To the extent provided in appropriations Acts, the Secretary is authorized to impose fees and charges for application, review, licensing, and regulation, or other actions under this Act, and to pay for the costs of such activities from the fees and charges collected.

(f) **GUARANTEE FEES.**—The Secretary is authorized to set and collect fees for loan guarantee commitments and loan guarantees that the Secretary makes under this Act.

(g) **FUNDING.**—

(1) **AUTHORIZATION OF APPROPRIATIONS FOR LOAN GUARANTEE COMMITMENTS.**—For each of fiscal years 2000, 2001, 2002, 2003, and 2004, there is authorized to be appropriated up to \$36,000,000 for the cost (as such term is defined in section 502(5) of the Federal Credit Reform Act of 1990) of annual loan guarantee commitments under this Act. Amounts appropriated under this paragraph shall remain available until expended.

(2) **AGGREGATE LOAN GUARANTEE COMMITMENT LIMITATION.**—The Secretary may make commitments to guarantee loans only to the extent that the total loan principal, any part of which is guaranteed, will not exceed \$1,000,000,000, unless another such amount is specified in appropriation Acts for any fiscal year.

(3) **AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATIVE EXPENSES.**—For each of the fiscal years 2000, 2001, 2002, 2003, and 2004, there is authorized to be appropriated \$1,000,000 for administrative expenses for carrying out this Act. The Secretary may transfer amounts appropriated under this paragraph to any appropriation account of HUD or another agency, to carry out the program under this Act. Any agency to which the Secretary may transfer amounts under this Act is authorized to accept such transferred amounts in any appropriation account of such agency.

SEC. 5. SELECTION OF APICS.

(a) **ELIGIBLE APPLICANTS.**—An entity shall be eligible to be selected for licensing under section 4 as an APIC only if the entity submits an application in compliance with the requirements established pursuant to subsection (b) and the entity meets or complies with the following requirements:

(1) **ORGANIZATION.**—The entity shall be a private, for-profit entity that qualifies as a community development entity for the purposes of the New Markets Tax Credits, to the extent such credits are established under Federal law.

(2) **MINIMUM PRIVATE EQUITY CAPITAL.**—The amount of private equity capital reasonably available to the entity, as determined by the Secretary, at the time that a license is approved may not be less than \$25,000,000.

(3) **QUALIFIED MANAGEMENT.**—The management of the entity shall, in the determination of the Secretary, meet such standards as the Secretary shall establish to ensure that the management of the APIC is qualified, and has the financial expertise, knowledge, experience, and capability necessary, to make investments for community and economic development in low-income communities.

(4) **CONFLICT OF INTEREST.**—The entity shall demonstrate that, in accordance with sound financial management practices, the entity is structured to preclude financial conflict of interest between the APIC and a manager or investor.

(5) **INVESTMENT STRATEGY.**—The entity shall prepare and submit to the Secretary an investment strategy that includes benchmarks for evaluation of its progress, that includes an analysis of existing locally owned businesses in the communities in which the investments under the strategy will be made, that

prioritizes such businesses for investment opportunities, and that fulfills the specific public purpose goals of the entity.

(6) STATEMENT OF PUBLIC PURPOSE GOALS.—The entity shall prepare and submit to the Secretary a statement of the public purpose goals of the entity, which shall—

(A) set forth goals that shall promote community and economic development, which shall include—

(i) making investments in low-income communities that further economic development objectives by targeting such investments in businesses or trades that comply with the requirements under subparagraphs (A) through (C) of section 3(10) relating to low-income communities in a manner that benefits low-income persons;

(ii) creating jobs in low-income communities for residents of such communities;

(iii) involving community-based organizations and residents in community development activities;

(iv) such other goals as the Secretary shall specify; and

(v) such elements as the entity may set forth to achieve specific public purpose goals;

(B) include such other elements as the Secretary shall specify; and

(C) include proposed measurements and strategies for meeting the goals.

(7) COMPLIANCE WITH LAWS.—The entity shall agree to comply with applicable laws, including Federal executive orders, Office of Management and Budget circulars, and requirements of the Department of the Treasury, and such operating and regulatory requirements as the Secretary may impose from time to time.

(8) OTHER.—The entity shall satisfy any other application requirements that the Secretary may impose by regulation or Federal Register notice.

(b) COMPETITIONS.—The Secretary shall select eligible entities under subsection (a) to be licensed under section 4 as APICs on the basis of competitions. The Secretary shall announce each such competition by causing a notice to be published in the Federal Register that invites applications for licenses and sets forth the requirements for application and such other terms of the competition not otherwise provided for, as determined by the Secretary.

(c) SELECTION.—In competitions under subsection (b), the Secretary shall select eligible entities under subsection (a) for licensing as APICs on the basis of—

(1) the extent to which the entity is expected to achieve the goals of this Act by meeting or exceeding criteria established under subsection (d); and

(2) to the extent practicable and subject to the existence of approvable applications, ensuring geographical diversity among the applicants selected and diversity of APICs investment strategies, so that urban and rural communities are both served, in the determination of the Secretary, by the program under this Act.

(d) SELECTION CRITERIA.—The Secretary shall establish selection criteria for competitions under subsection (b), which shall include the following criteria:

(1) CAPACITY.—

(A) MANAGEMENT.—The extent to which the entity's management has the quality, experience, and expertise to make and manage successful investments for community and economic development in low-income communities.

(B) STATE AND LOCAL COOPERATION.—The extent to which the entity demonstrates a capacity to cooperate with States or units of general local government and with community-based organizations and residents of low-income communities.

(2) INVESTMENT STRATEGY.—The quality of the entity's investment strategy submitted in accordance with subsection (a)(5) and the extent to which the investment strategy furthers the goals of this Act pursuant to paragraph (3) of this subsection.

(3) PUBLIC PURPOSE GOALS.—With respect to the statement of public purpose goals of the entity submitted in accordance with subsection (a)(6), and the strategy and measurements included therein—

(A) the extent to which such goals promote community and economic development;

(B) the extent to which such goals provide for making qualified investments in low-income communities that further economic development objectives, such as—

(i) creating, within 2 years of the completion of the initial such investment, job opportunities, opportunities for ownership, and other eco-

conomic opportunities within a low-income community, both short-term and of a longer duration;

(ii) improving the economic vitality of a low-income community, including stimulating other business development;

(iii) bringing new income into a low-income community and assisting in the revitalization of such community;

(iv) converting real property for the purpose of creating a site for business incubation and location, or business district revitalization;

(v) enhancing economic competition, including the advancement of technology;

(vi) rural development;

(vii) mitigating, rehabilitating, and reusing real property considered subject to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.; commonly referred to as the Resource Conservation and Recovery Act) or restoring coal mine-scarred land;

(viii) creation of local wealth through investments in employee stock ownership companies or resident-owned ventures; and

(ix) any other objective that the Secretary may establish to further the purposes of this Act;

(C) the quality of jobs to be created for residents of low-income communities, taking into consideration such factors as the payment of higher wages, job security, employment benefits, opportunity for advancement, and personal asset building;

(D) the extent to which achievement of such goals will involve community-based organizations and residents in community development activities; and

(E) the extent to which the investments referred to in subparagraph (B) are likely to benefit existing small business in low-income communities or will encourage the growth of small business in such communities.

(4) OTHER.—Any other criteria that the Secretary may establish to carry out the purposes of this Act.

(e) FIRST YEAR REQUIREMENTS.—

(1) NUMERICAL LIMITATION.—The number of APICs may not, at any time during the 1-year period that begins upon the Secretary awarding the first license for an APIC under this Act, exceed 15.

(2) LIMITATION ON ALLOCATION OF AVAILABLE CREDIT SUBSIDY.—Of the amount of budget authority initially made available for allocation under this Act for APICs, the amount allocated for any single APIC may not exceed 20 percent.

(3) NATIVE AMERICAN PRIVATE INVESTMENT COMPANY.—Subject only to the absence of an approvable application from an entity, during the 1-year period referred to in paragraph (1), of the entities selected and licensed by the Secretary as APICs, at least one shall be an entity that has as its primary purpose the making of qualified low-income community investments in areas that are within Indian country (as such term is defined in section 1151 of title 18, United States Code) or within lands that have status as Hawaiian home land under section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) or are acquired pursuant to such Act. The Secretary may establish specific selection criteria for applicants under this paragraph.

(f) COMMUNICATIONS BETWEEN HUD AND APPLICANTS.—

(1) IN GENERAL.—The Secretary shall set forth in regulations the procedures under which HUD and applicants for APIC licenses, and others, may communicate. Such regulations shall—

(A) specify by position the HUD officers and employees who may communicate with such applicants and others;

(B) permit HUD officers and employees to request and discuss with the applicant and others (such as banks or other credit or business references, or potential investors, that the applicant specifies in writing) any more detailed information that may be desirable to facilitate HUD's review of the applicant's application;

(C) restrict HUD officers and employees from revealing to any applicant—

(i) the fact or chances of award of a license to such applicant, unless there has been a public announcement of the results of the competition; and

(ii) any information with respect to any other applicant; and

(D) set forth requirements for making and keeping records of any communications conducted under this subsection, including requirements for making such records available to the public after the award of licenses under an initial or subsequent notice, as appropriate, under subsection (a).

(2) **TIMING.**—Regulations under this subsection may be issued as interim rules for effect on or before the date of publication of the first notice under subsection (a), and shall apply only with respect to applications under such notice. Regulations to implement this subsection with respect to any notice after the first such notice shall be subject to notice and comment rulemaking.

(3) **INAPPLICABILITY OF DEPARTMENT OF HUD ACT PROVISION.**—Section 12(e)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3537a(e)(2)) is amended by inserting before the period at the end the following: “or any license provided under the America’s Private Investment Companies Act”.

SEC. 6. OPERATIONS OF APICS.

(a) **POWERS AND AUTHORITIES.**—

(1) **IN GENERAL.**—An APIC shall have any powers or authorities that—

(A) the APIC derives from the jurisdiction in which it is organized, or that the APIC otherwise has;

(B) may be conferred by a license under this Act; and

(C) the Secretary may prescribe by regulation.

(2) **NEW MARKET ASSISTANCE.**—Nothing in this Act shall preclude an APIC or its investors from receiving an allocation of New Market Tax Credits (to the extent such credits are established under Federal law) if the APIC satisfies any applicable terms and conditions under the Internal Revenue Code of 1986.

(b) **INVESTMENT LIMITATIONS.**—

(1) **QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS.**—Substantially all investments that an APIC makes shall be qualified low-income community investments if the investments are financed with—

(A) amounts available from the proceeds of the issuance of an APIC’s qualified debenture guaranteed under this Act;

(B) proceeds of the sale of obligations described under subsection (c)(3)(C)(iii); or

(C) the use of private equity capital, as determined by the Secretary, in an amount specified in the APIC’s license.

(2) **SINGLE BUSINESS INVESTMENTS.**—An APIC shall not, as a matter of sound financial practice, invest in any one business an amount that exceeds an amount equal to 35 percent of the sum of—

(A) the APIC’s private equity capital; plus

(B) an amount equal to the percentage limit that the Secretary determines that an APIC may have outstanding at any one time, under subsection (c)(2)(A).

(c) **BORROWING POWERS; QUALIFIED DEBENTURES.**—

(1) **ISSUANCE.**—An APIC may issue qualified debentures. The Secretary shall, by regulation, specify the terms and requirements for debentures to be considered qualified debentures for purposes of this Act, except that the term to maturity of any qualified debenture may not exceed 21 years and each qualified debenture shall bear interest during all or any part of that time period at a rate or rates approved by the Secretary.

(2) **LEVERAGE LIMITS.**—In general, as a matter of sound financial management practices—

(A) the total amount of qualified debentures that an APIC issues under this Act that an APIC may have outstanding at any one time shall not exceed an amount equal to 200 percent of the private equity capital of the APIC, as determined by the Secretary; and

(B) an APIC shall not have more than \$300,000,000 in face value of qualified debentures issued under this Act outstanding at any one time.

(3) **REPAYMENT.**—

(A) **CONDITION OF BUSINESS WIND-UP.**—An APIC shall have repaid, or have otherwise been relieved of indebtedness, with respect to any interest or principal amounts of borrowings under this subsection no less than 2 years before the APIC may dissolve or otherwise complete the wind-up of its business.

(B) **TIMING.**—An APIC may repay any interest or principal amounts of borrowings under this subsection at any time: *Provided*, That the repayment of such amounts shall not relieve an APIC of any duty otherwise applicable to the APIC under this Act, unless the Secretary orders such relief.

(C) **USE OF INVESTMENT PROCEEDS BEFORE REPAYMENT.**—Until an APIC has repaid all interest and principal amounts on APIC borrowings under this subsection, an APIC may use the proceeds of investments, in accordance with regulations issued by the Secretary, only to—

- (i) pay for proper costs and expenses the APIC incurs in connection with such investments;
- (ii) pay for the reasonable administrative expenses of the APIC;
- (iii) purchase Treasury securities;
- (iv) repay interest and principal amounts on APIC borrowings under this subsection;
- (v) make interest, dividend, or other distributions to or on behalf of an investor; or
- (vi) undertake such other purposes as the Secretary may approve.

(D) **USE OF INVESTMENT PROCEEDS AFTER REPAYMENT.**—After an APIC has repaid all interest and principal amounts on APIC borrowings under this subsection, and subject to continuing compliance with subsection (a), the APIC may use the proceeds from investments to make interest, dividend, or other distributions to or on behalf of investors in the nature of returns on capital, or the withdrawal of private equity capital, without regard to subparagraph (C) but in conformity with the APIC’s investment strategy and statement of public purpose goals.

(d) **REUSE OF QUALIFIED DEBENTURE PROCEEDS.**—An APIC may use the proceeds of sale of Treasury securities purchased under subsection (c)(3)(C)(iii) to make qualified low-income community investments, subject to the Secretary’s approval. In making the request for the Secretary’s approval, the APIC shall follow the procedures applicable to an APIC’s request for HUD guarantee action, as the Secretary may modify such procedures for implementation of this subsection. Such procedures shall include the description and certifications that an APIC must include in all requests for guarantee action, and the environmental certification applicable to initial expenditures for a project or activity.

(e) **ANTIPIRATING.**—Notwithstanding any other provision of law, an APIC may not use any private equity capital required to be contributed under this Act, or the proceeds from the sale of any qualified debenture under this Act, to make an investment, as determined by the Secretary, to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

(f) **EXCLUSION OF APIC FROM DEFINITION OF DEBTOR UNDER BANKRUPTCY PROVISIONS.**—Section 109(b)(2) of title 11, United States Code, is amended by inserting before “credit union” the following: “America’s Private Investment Company licensed under the America’s Private Investment Companies Act.”

SEC. 7. CREDIT ENHANCEMENT BY THE FEDERAL GOVERNMENT.

(a) ISSUANCE AND GUARANTEE OF QUALIFIED DEBENTURES.—

(1) **AUTHORITY.**—To the extent consistent with the Federal Credit Reform Act of 1990, the Secretary is authorized to make commitments to guarantee and guarantee the timely payment of all principal and interest as scheduled on qualified debentures issued by APICs. Such commitments and guarantees may only be made in accordance with the terms and conditions established under paragraph (2).

(2) **TERMS AND CONDITIONS.**—The Secretary shall establish such terms and conditions as the Secretary determines to be appropriate for commitments and guarantees under this subsection, including terms and conditions relating to amounts, expiration, number, priorities of repayment, security, collateral, amortization, payment of interest (including the timing thereof), and fees and charges. The terms and conditions applicable to any particular commitment or guarantee may be established in documents that the Secretary approves for such commitment or guarantee.

(3) **SENIORITY.**—Notwithstanding any other provision of Federal law or any law or the constitution of any State, qualified debentures guaranteed under this subsection by the Secretary shall be senior to any other debt obligation, equity contribution or earnings, or the distribution of dividends, interest, or other amounts, of an APIC.

(b) **ISSUANCE OF TRUST CERTIFICATES.**—The Secretary, or an agent or entity selected by the Secretary, is authorized to issue trust certificates representing ownership of all or a fractional part of guaranteed qualified debentures issued by APICs and held in trust.

(c) GUARANTEE OF TRUST CERTIFICATES.—

(1) **IN GENERAL.**—The Secretary is authorized, upon such terms and conditions as the Secretary determines to be appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Secretary, or an agent or other entity, for purposes of this section. Such guarantee

shall be limited to the extent of principal and interest on the guaranteed qualified debentures which compose the trust.

(2) **SUBSTITUTION OPTION.**—The Secretary shall have the option to replace in the corpus of the trust any prepaid or defaulted qualified debenture with a debenture, another full faith and credit instrument, or any obligations of the United States, that may reasonably substitute for such prepaid or defaulted qualified debenture.

(3) **PROPORTIONATE REDUCTION OPTION.**—In the event that the Secretary elects not to exercise the option under paragraph (2), and a qualified debenture in such trust is prepaid, or in the event of default of a qualified debenture, the guarantee of timely payment of principal and interest on the trust certificate shall be reduced in proportion to the amount of principal and interest that such prepaid qualified debenture represents in the trust. Interest on prepaid or defaulted qualified debentures shall accrue and be guaranteed by the Secretary only through the date of payment of the guarantee. During the term of a trust certificate, it may be called for redemption due to prepayment or default of all qualified debentures that are in the corpus of the trust.

(d) **FULL FAITH AND CREDIT BACKING OF GUARANTEES.**—The full faith and credit of the United States is pledged to the timely payment of all amounts which may be required to be paid under any guarantee by the Secretary pursuant to this section.

(e) **SUBROGATION AND LIENS.**—

(1) **SUBROGATION.**—In the event the Secretary pays a claim under a guarantee issued under this section, the Secretary shall be subrogated fully to the rights satisfied by such payment.

(2) **PRIORITY OF LIENS.**—No State or local law, and no Federal law, shall preclude or limit the exercise by the Secretary of its ownership rights in the debentures in the corpus of a trust under this section.

(f) **REGISTRATION.**—

(1) **IN GENERAL.**—The Secretary shall provide for a central registration of all trust certificates issued pursuant to this section.

(2) **AGENTS.**—The Secretary may contract with an agent or agents to carry out on behalf of the Secretary the pooling and the central registration functions of this section notwithstanding any other provision of law, including maintenance on behalf of and under the direction of the Secretary, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts backed by qualified debentures guaranteed under this Act and the issuance of trust certificates to facilitate formation of the corpus of the trusts. The Secretary may require such agent or agents to provide a fidelity bond or insurance in such amounts as the Secretary determines to be necessary to protect the interests of the Government.

(3) **FORM.**—Book-entry or other electronic forms of registration for trust certificates under this Act are authorized.

(g) **TIMING OF ISSUANCE OF GUARANTEES OF QUALIFIED DEBENTURES AND TRUST CERTIFICATES.**—The Secretary may, from time to time in the Secretary's discretion, exercise the authority to issue guarantees of qualified debentures under this Act or trust certificates under this Act.

SEC. 8. APIC REQUESTS FOR GUARANTEE ACTIONS.

(a) **IN GENERAL.**—The Secretary may issue a guarantee under this Act for a qualified debenture that an APIC intends to issue only pursuant to a request to the Secretary by the APIC for such guarantee that is made in accordance with regulations governing the content and procedures for such requests, that the Secretary shall prescribe. Such regulations shall provide that each such request shall include—

(1) a description of the manner in which the APIC intends to use the proceeds from the qualified debenture;

(2) a certification by the APIC that the APIC is in substantial compliance with—

(A) this Act and other applicable laws, including any requirements established under this Act by the Secretary;

(B) all terms and conditions of its license, any cease-and-desist order issued under section 10, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding; and

(C) all requirements relating to the allocation and use of New Markets Tax Credits, to the extent such credits are established under Federal law; and

(3) any other information or certification that the Secretary considers appropriate.

(b) REQUESTS FOR GUARANTEE OF QUALIFIED DEBENTURES THAT INCLUDE FUNDING FOR INITIAL EXPENDITURE FOR A PROJECT OR ACTIVITY.—In addition to the description and certification that an APIC is required to supply in all requests for guarantee action under subsection (a), in the case of an APIC's request for a guarantee that includes a qualified debenture, the proceeds of which the APIC expects to be used as its initial expenditure for a project or activity in which the APIC intends to invest, and the expenditure for which would require an environmental assessment under the National Environmental Policy Act of 1969 and other related laws that further the purposes of such Act, such request for guarantee action shall include evidence satisfactory to the Secretary of the certification of the completion of environmental review of the project or activity required of the cognizant State or local government under subsection (c). If the environmental review responsibility for the project or activity has not been assumed by a State or local government under subsection (c), then the Secretary shall be responsible for carrying out the applicable responsibilities under the National Environmental Policy Act of 1969 and other provisions of law that further the purposes of such Act that relate to the project or activity, and the Secretary shall execute such responsibilities before acting on the APIC's request for the guarantee that is covered by this subsection.

(c) RESPONSIBILITY FOR ENVIRONMENTAL REVIEWS.—

(1) EXECUTION OF RESPONSIBILITY BY THE SECRETARY.—This subsection shall apply to guarantees by the Secretary of qualified debentures under this Act, the proceeds of which would be used in connection with qualified low-income community investments of APICs under this Act.

(2) ASSUMPTION OF RESPONSIBILITY BY COGNIZANT UNIT OF GENERAL GOVERNMENT.—

(A) GUARANTEE OF QUALIFIED DEBENTURES.—In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this Act, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the guarantee of qualified debentures, any part of the proceeds of which are to fund particular qualified low-income community investments of APICs under this Act, if a State or unit of general local government, as designated by the Secretary in accordance with regulations issued by the Secretary, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 and such other provisions of law that further such Act as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake the funding of such investments as a Federal action.

(B) IMPLEMENTATION.—The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality. Such regulations shall—

(i) specify any other provisions of law which further the purposes of the National Environmental Policy Act of 1969 and to which the assumption of responsibility as provided in this subsection applies;

(ii) provide eligibility criteria and procedures for the designation of a State or unit of general local government to assume all of the responsibilities in this subsection;

(iii) specify the purposes for which funds may be committed without regard to the procedure established under paragraph (3);

(iv) provide for monitoring of the performance of environmental reviews under this subsection;

(v) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

(vi) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under subparagraph (A).

(C) RESPONSIBILITIES OF STATES AND UNITS OF GENERAL LOCAL GOVERNMENT.—The Secretary's duty under subparagraph (B) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular request for guarantee under subparagraph (A), or the use of funds for a qualified investment.

(3) PROCEDURE.—Subject to compliance by the APIC with the requirements of this title, the Secretary shall approve the request for guarantee of a qualified

debenture, any part of the proceeds of which is to fund particular qualified low-income community investments of an APIC under this Act, that is subject to the procedures authorized by this subsection only if, not less than 15 days prior to such approval and prior to any commitment of funds to such investment (except for such purposes specified in the regulations issued under paragraph (2)(B)), the APIC submits to the Secretary a request for guarantee of a qualified debenture that is accompanied by evidence of a certification of the State or unit of general local government which meets the requirements of paragraph (4). The approval by the Secretary of any such certification shall be deemed to satisfy the Secretary's responsibilities pursuant to paragraph (1) under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the guarantees of qualified debentures, any parts of the proceeds of which are to fund such investments, which are covered by such certification.

(4) CERTIFICATION.—A certification under the procedures authorized by this subsection shall—

- (A) be in a form acceptable to the Secretary;
- (B) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;
- (C) specify that the State or unit of general local government under this subsection has fully carried out its responsibilities as described under paragraph (2); and
- (D) specify that the certifying officer—
 - (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and
 - (ii) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

SEC. 9. EXAMINATION AND MONITORING OF APICS.

(a) IN GENERAL.—The Secretary shall, under regulations, through audits, performance agreements, license conditions, or otherwise, examine and monitor the operations and activities of APICs for compliance with sound financial management practices, and for satisfaction of the program and procedural goals of this Act and other related Acts. The Secretary may undertake any responsibility under this section in cooperation with an APIC liaison committee, or any agency that is a member of such a committee, or other agency.

(b) MONITORING, UPDATING, AND PROGRAM REVIEW.—

(1) REPORTING AND UPDATING.—The Secretary shall establish such annual or more frequent reporting requirements for APICs, and such requirements for the updating of the statement of public purpose goals, investment strategy (including the benchmarks in such strategy), and other documents that may have been used in the license application process under this Act, as the Secretary determines necessary to assist the Secretary in monitoring the compliance and performance of APICs.

(2) ANNUAL AUDITS.—The Secretary shall require each APIC to have an independent audit conducted annually of the operations of the APIC. The Secretary, in consultation with the Administrator and the Secretary of the Treasury, shall establish requirements and standards for such audits, including requirements that such audits be conducted in accordance with generally accepted accounting principles, that the APIC submit the results of the audit to Secretary, and that specify the information to be submitted.

(3) EXAMINATIONS.—The Secretary shall, no less often than once every 2 years, examine the operations and portfolio of each APIC licensed under this Act for compliance with sound financial management practices, and for compliance with this Act.

(4) EXAMINATION STANDARDS.—

(A) SOUND FINANCIAL MANAGEMENT PRACTICES.—The Secretary shall examine each APIC to ensure, as a matter of sound financial management practices, substantial compliance with this and other applicable laws, including Federal executive orders, Department of Treasury and Office of Management and Budget guidance, circulars, and application and licensing requirements on a continuing basis. The Secretary may, by regulation, es-

establish any additional standards for sound financial management practices, including standards that address solvency and financial exposure.

(B) PERFORMANCE AND OTHER EXAMINATIONS.—The Secretary shall monitor each APIC's progress in meeting the goals in the APIC's statement of public purpose goals, executing the APIC's investment strategy, and other matters.

(c) INSPECTOR GENERAL RESPONSIBILITY.—In carrying out monitoring of HUD's responsibilities under this Act and for purposes of ensuring that the program under this Act is operated in accordance with sound financial management practices, the Inspector General of the Department of Housing and Urban Development shall consult with the Inspector General of the Department of the Treasury and the Inspector General of the Small Business Administration, as appropriate, and may enter into such agreements and memoranda of understanding as may be necessary to obtain the cooperation of the Inspectors General of the Department of the Treasury and the Small Business Administration in carrying out such function.

(d) ANNUAL REPORT BY SECRETARY.—The Secretary shall submit a report to the Congress annually regarding the operations, activities, financial health, and achievements of the APIC program under this Act. The report shall list each investment made by an APIC and include a summary of the examinations conducted under subsection (b)(3), the guarantee actions of HUD, and any regulatory or policy actions taken by HUD. The report shall distinguish recently licensed APICs from APICs that have held licenses for a longer period for purposes of indicating program activities and performance.

(e) GAO REPORT.—

(1) REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the operation of the program under this Act for licensing and guarantees for APICs.

(2) CONTENTS.—The report shall include—

(A) an analysis of the operations and monitoring by HUD of the APIC program under this Act;

(B) the administrative and capacity needs of HUD required to ensure the integrity of the program;

(C) the extent and adequacy of any credit subsidy appropriated for the program; and

(D) the management of financial risk and liability of the Federal Government under the program.

SEC. 10. PENALTIES.

(a) VIOLATIONS SUBJECT TO PENALTY.—The Secretary may impose a penalty under this subsection on any APIC or manager of an APIC that, by any act, practice, or failure to act, engages in fraud, mismanagement, or noncompliance with this Act, the regulations under this Act, or a condition of the APIC's license under this Act. The Secretary shall, by regulation, identify, by generic description of a role or responsibilities, any manager of an APIC that is subject to a penalty under this section.

(b) PENALTIES REQUIRING NOTICE AND AN OPPORTUNITY TO RESPOND.—If, after notice in writing to an APIC or the manager of an APIC that the APIC or manager has engaged in any action, practice, or failure to act that, under subsection (a), is subject to a penalty, and after an opportunity for the APIC or manager to respond to the notice, the Secretary determines that the APIC or manager engaged in such action or failure to act, the Secretary may, in addition to other penalties imposed—

(1) assess a civil money penalty, except that any civil money penalty under this subsection shall be in an amount not exceeding \$10,000;

(2) issue an order to cease and desist with respect to such action, practice, or failure to act of the APIC or manager;

(3) suspend, or condition the use of, the APIC's license, including deferring, for the period of the suspension, any commitment to guarantee any new qualified debenture of the APIC, except that any suspension or condition under this paragraph may not exceed 90 days; and

(4) impose any other penalty that the Secretary determines to be less burdensome to the APIC than a penalty under subsection (c).

(c) PENALTIES REQUIRING NOTICE AND HEARING.—If, after notice in writing to an APIC or the manager of an APIC that an APIC or manager has engaged in any action, practice, or failure to act that, under subsection (a), is subject to a penalty, and after an opportunity for administrative hearing, the Secretary determines that the APIC or manager engaged in such action or failure to act, the Secretary may—

(1) assess a civil money penalty against the APIC or a manager in any amount;

(2) require the APIC to divest any interest in an investment, on such terms and conditions as the Secretary may impose; or

(3) revoke the APIC's license.

(d) EFFECTIVE DATE OF PENALTIES.—

(1) PRIOR NOTICE REQUIREMENT.—Except as provided in paragraph (2) of this subsection, a penalty under subsection (b) or (c) shall not be due and payable and shall not otherwise take effect or be subject to enforcement by an order of a court, before notice of the penalty is published in the Federal Register.

(2) CEASE-AND-DESIST ORDERS AND SUSPENSION OR CONDITIONING OF LICENSE.—In the case of a cease-and-desist order under subsection (b)(2) or the suspension or conditioning of an APIC's license under subsection (b)(3), the following procedures shall apply:

(A) ACTION WITHOUT PUBLISHED NOTICE.—The Secretary may order an APIC or manager to cease and desist from an action, practice, or failure to act or may suspend or condition an APIC's license, for not more than 45 days without prior publication of notice in the Federal Register, but such cease-and-desist order or suspension or conditioning shall take effect only after the Secretary has issued a written notice (which may include a writing in electronic form) of such action to the APIC. Notwithstanding subsection (b), such written notice shall be effective without regard to whether the APIC has been accorded an opportunity to respond. Upon such notice, such cease-and-desist order or suspension or conditioning shall be subject to enforcement by an order of a court.

(B) PUBLICATION OF NOTICE OF SUSPENSION OR CONDITIONING OF LICENSE.—Upon a suspension or conditioning of a license taking effect pursuant to subparagraph (A), the Secretary shall promptly cause a notice of suspension or conditioning of such license for a period of not more than 90 days to be published in the Federal Register. The Secretary shall provide the APIC an opportunity to respond to such notice. For purposes of the determining the duration of the period of any suspension or conditioning under this subparagraph, the first day of such period shall be the day of issuance of the written notice under this paragraph of the suspension or conditioning.

(C) REVOCATION OF LICENSE.—During the period of the suspension or conditioning of an APIC's license, the Secretary may take action under subsection (c)(3) to revoke the license of the APIC, in accordance with the procedures applicable to such subsection. Notwithstanding any other provision of this section, if the Secretary takes such action, the Secretary may extend the suspension or conditioning of the APIC's license, for one or more periods of not more than 90 days each, by causing notice of such action to be published in the Federal Register—

(i) for the first such extension, before the expiration of the period under subparagraph (B); and

(ii) for any subsequent extension, before the expiration of the preceding extension period under this subparagraph.

(D) TERM OF EFFECTIVENESS.—A cease-and-desist order or the suspension or conditioning of an APIC's license by the Secretary under this paragraph shall remain in effect in accordance with the terms of the order, suspension, or conditioning until final adjudication in any action undertaken to challenge the order, or the suspension or conditioning, or the revocation, of an APIC's license.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect upon the expiration of the 6-month period beginning on the date of the enactment of this Act.

(b) ISSUANCE OF REGULATIONS AND GUIDELINES.—Any authority under this Act of the Secretary, the Administrator, and the Secretary of the Treasury to issue regulations, standards, guidelines, or licensing requirements, and any authority of such officials to consult or enter into agreements or memoranda of understanding regarding such issuance, shall take effect on the date of the enactment of this Act.

SEC. 12. SUNSET.

After the expiration of the 5-year period beginning upon the date that the Secretary awards the first license for an APIC under this Act—

(1) the Secretary may not license any APIC; and

(2) no amount may be appropriated for the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c)) of any guarantee under this Act for any debenture issued by an APIC.

This section may not be construed to prohibit, limit, or affect the award, allocation, or use of any budget authority for the costs of such guarantees that is appropriated before the expiration of such period.

EXPLANATION OF THE LEGISLATION

H.R. 2764, “America’s Private Investment Companies Act” authorizes the Secretary of Housing and Urban Development (HUD) to license a number of privately managed, for-profit investment companies for purposes of making large-scale, equity and debt investments in distressed urban and rural areas. Each America’s Private Investment Company (“APIC”) must have a minimum of \$25 million in private equity capital contributed by investors in order to be licensed by HUD. An APIC would be eligible to issue debentures, guaranteed by the government, for twice (200%) the amount of its total equity capital. The contributed equity and amounts raised through issuance of debentures are to be invested in businesses operating in low and moderate-income areas. The return from those business investments would go first to repay the government-guaranteed debt.

The legislation provides that APIC licensees are to be chosen by HUD pursuant to a competition. The number of APICs licensed at any one time would depend upon the amount of budget authority available to support the total credit subsidy provided to the program, but would be limited in the first year to no more than fifteen APICs. Of those APICs chosen in the first year, subject to the existence of an approvable application, at least one APIC shall have as its primary mission objective business investment in Native American lands.

HUD shall monitor each APIC as to its progress in meeting its stated public purpose goals. The Secretary may reward well-performing APICs which exceed their public purpose investment goals by increasing the credit subsidy allocated to those APICs, to the extent there is credit subsidy still available. Such APICs must have been licensed for a minimum of two years and any such increases are to be provided based on a competition of eligible APICs.

The proposed credit subsidy for the program is \$36 million each fiscal year for FY 2000 through FY 2004. HUD estimates this level will support \$1 billion in investments. In addition, \$1 million is authorized for each of these fiscal years (2000–2004), for administrative expenses in connection with carrying out the provisions of the legislation.

In addition to monitoring APICs’ progress on their public purpose goals, the Secretary of HUD shall, for purposes of managing the financial risk of the federal government, regulate APICs for financial soundness and ensure that each APIC is structured so as to operate based on sound management practices. The HUD Secretary shall consult with the Secretary of the Treasury for purposes of accomplishing these functions. The legislation requires each APIC to submit an annual independent audit to the Secretary detailing its investments. The legislation also requires the HUD Secretary to report annually to Congress on the status of the APIC program. In addition, the General Accounting Office is required to report on the APIC program two years after the date of enactment of the legislation.

The effective date of the legislation, for licensing and other operations, is six months after the date of enactment. Authority to grant licenses shall sunset five years after the date that the Secretary awards the first license for an APIC under this Act.

LEGISLATIVE HISTORY

H.R. 2764 was introduced by Ranking Member LaFalce on August 5, 1999 and contains the APIC portion of the Administration's legislative proposals. H.R. 2848, the "New Markets Initiative Act of 1999", was introduced by Representatives Watts, Talent, Leach and Baker at the request of the Administration on September 13, 1999, and contains the Administration's complete New Markets Initiative legislative program. H.R. 2764 is substantively the same as Title III of H.R. 2848, both of which fall under the jurisdiction of the Committee.

On November 10, 1999, the Subcommittee on Capital Markets, Securities, and GSEs held a hearing on capital formation in underserved areas. The hearing focused on the APIC proposal embodied in H.R. 2764 and on other ideas for promoting economic growth in these areas. The Committee held a markup of H.R. 2764 and Title III of H.R. 2848 on April 12, 2000.

BACKGROUND AND NEED FOR LEGISLATION

In an era of unprecedented economic growth and prosperity, there remain many economically distressed communities, both rural and urban, which have not benefited to any great degree from the most recent economic expansion enjoyed by our Nation. In these communities, levels of unemployment, poverty, and other indicia of social distress, remain stubbornly high—yet untapped market opportunities exist, in many of these areas, to establish and expand businesses and to develop jobs and community assets.

There is bipartisan consensus in Congress that the federal government can and should play a role in encouraging investments in these communities. For several years both Republicans and Democrats have proposed and supported granting tax and regulatory relief, including capital gains tax relief to businesses operating within distressed areas. Many of these proposals were part of H.R. 815, the "American Community Renewal Act," introduced by Representatives Jim Talent and J.C. Watts, which would have designated a number of these distressed areas as "renewal communities" eligible for such benefits. The House has already passed the tax provisions of H.R. 815, and this Committee has passed provisions relating to HUD property disposition within these communities as part of H.R. 1776, the "American Homeownership and Economic Opportunity Act of 2000."

The Administration has also proposed a series of programs, collectively known as the "New Markets Initiative," also intended to foster economic development in distressed communities. These proposals include tax credits for businesses in these areas ("New Markets Tax Credits"), a small business component (establishing a "New Markets Venture Capital Program"), and the formation of a number of companies intended to make relatively large scale equity and credit investments in distressed areas—APICs. The FY 2000 VA/HUD Appropriations Act provided that \$20 million in credit

subsidy would be available for use by APICs for Fiscal Year 2000 if the program was authorized by June 30, 2000. If the program is not authorized by that date, the funding reverts to the Community Development Financial Institutions program administered by the Department of the Treasury.

The APIC portion of the New Markets Initiative falls under the jurisdiction of this Committee. The concept is closely related in concept to the Small Business Investment Companies ("SBIC") program currently administered by the Small Business Administration (SBA), except that the SBIC program is limited in the size of projects it can serve and that SBICs invest in ventures only (not real estate). Community development organizations maintain that the infusion of additional amounts of equity capital are especially vital for enabling large-scale investments to occur in distressed areas. Importantly, these investments would be economically viable as freestanding business entities, providing a profitable return to investors. However, because the costs of establishing these businesses in some of these distressed areas are higher relative to other areas due to a variety of factors (such as remediation of environmental contamination, for example), the return on investors equity is not as high as demanded by these investors. APICs are intended to lessen the cost of capital so that these large-scale investments would then be made.

APICs are not intended to fund or subsidize the operations of businesses, which are not economically viable. On the contrary, these entities exist to encourage the establishment of fundamentally sound businesses in certain locations. Possible uses for APICs' funds include the establishment of a new facility, such as a call center, data processing "back office," or factory, by a large company (or a small company joint venturing with a large one). In addition, a mid-size manufacturing company seeking to increase production could use APIC investments for expansion of an existing facility, the upgrading of equipment or the expansion of staff. Other uses could include expansion of the service area of a mid-size service company, such as a trucking company, building contractor, or home health care firm, development of a multi-tenant shopping center, or opening or expanding a large retail company in a new geographic area. Buyout of a company to be revitalized in its existing facility, acquisition of the property of a departing large company and development of an incubator or industrial park, or investment in another fund that invests in businesses locating or expanding in targeted low-to-moderate income areas are all methods whereby an APIC can fulfill its public purpose investment role.

By passing this APIC legislation, the hope and expectation of this Committee is that a bipartisan, comprehensive package of measures to help revitalize America's distressed urban and rural communities, which would include the best elements of the American Community Renewal Act and the New Markets Initiative, be enacted this year.

COMMITTEE ACTIONS REGARDING INTRODUCED LEGISLATION

The Committee adopted a Managers' Amendment sponsored by Chairman Leach, Mr. Lazio, Ranking Member LaFalce, and Mr. Kanjorski, which made substantial changes to the original bill. In broad terms, the changes in the Managers' Amendment were

meant to accomplish three major goals. The first of these goals was to minimize the potential for fraud and abuse and protect the American taxpayer from unnecessary exposure. Second, the Committee wanted to ensure that the statutory language clearly reflected Congressional intent, and provided adequate direction for the program so that it gives rise to types of investments in low-income communities that will truly improve the lives of our citizens. Finally, the Managers' Amendment contained provisions designed to address concerns with HUD's current capacity to administer the program, and to ensure HUD's sound management of the program established by the legislation.

MINIMIZING THE POTENTIAL FOR FRAUD AND ABUSE

The Managers' Amendment adopted by the Committee added certain defined terms to the legislation in Section 3, "Definitions," and further defined some existing terms of the bill. These additions and revisions make more specific and strengthen the language of the bill. The most important of these is a new definition for "private equity capital". A central feature of the APIC program is its reliance on market discipline. APIC investors and managers make investment decisions based on the ability of a business ultimately to succeed because the investor's equity is at-risk first if the business fails. The interests of the investor coincide therefore, with the interest of the taxpayer. The legislation as introduced, however, provided that "equity" was to be defined through guidelines issued by the HUD Secretary. The Committee felt that, at a minimum and as a matter of prudence, the legislation should include a statutory definition of equity that would prevent an overly expansive definition from allowing APIC investors to comply with the letter of the law without truly risking any of their own capital. In accomplishing this goal, the Committee looked to existing statutes, such as those governing SBA programs similar in concept to the APIC program, and worked through the specifics of the definition with HUD to ensure that it was not overly restrictive or that it conflicts with guidelines issued by the Department of the Treasury which would govern tax credits under the New Markets program.

Additional changes were included in the Managers' Amendment to enhance the integrity of the program. For example, the Committee believed it was important to set forth more clearly in Section 7 of the bill the seniority of the federal government's position in relation to any other obligation the APIC may have. A change to require the HUD Secretary to make a determination, prior to the licensing of any APIC, that the management of the entity is clearly qualified was also made. Section 9, "Examination and Monitoring of APICs" has been revised to require that each APIC submit an annual independent audit detailing its investments to the Secretary. Changes were also made to Section 9 to require the HUD Secretary to report annually to Congress on APICs and their investments. Finally, in Section 10, "Penalties", the Committee strengthened the power and sanctions available to HUD so that the Department can more effectively avert any undue taxpayer losses.

CLEARLY STATING CONGRESSIONAL INTENT REGARDING APIC INVESTMENTS

This Committee intends that an APIC licensed under the provisions of this legislation shall be in the business of making investments that benefit low-income people and communities, and that such an entity does not become an example of “corporate welfare” by making investments that would bring profits to its investors without the requisite social benefits accruing to distressed areas from these investments. The Committee is aware of well-intended programs once administered by HUD, such as the Urban Development Action Grants (UDAG) program, that spent government funds on projects that could easily have been financed through private sources, which resulted in little or no benefit to distressed areas. The intent of the Committee is that APIC investments be made in communities where they are truly needed, and not in areas which technically may be within a low-income community but where incomes may in reality be much higher. Affluent sections can coexist within very distressed areas in census tracts that would meet the definitions for low- and moderate-income areas eligible for APIC investments. However, a statutory requirement that HUD define all of these areas nationwide would have been overly burdensome and impractical in the Committee’s view.

For this reason, language added by the Managers’ Amendment and appearing in Section 5(a)(6), “Statement of Public Purpose Goals,” refers to investments “that further economic development objectives by targeting such investments in businesses that comply with the requirements [of this Act] . . . in a manner that benefits low-income persons.” The Committee intends by addition of this language that APICs channel their activities toward truly meritorious investments without precisely delineating within individual census tracts where the businesses these APICs invest in must be located. The Committee does not intend that APICs meet compliance requirements under this legislation by primarily making investments in subareas of an otherwise qualifying low-income community that have resident incomes disproportionately higher, or that show patterns of displacement and more rapidly increasing property values, than those of the larger qualifying area. By the same token, in determining compliance with the “qualified active business” test for APIC investments, the term “low-income community” may be interpreted to include specific locations in an area with a very high population density that are located immediately adjacent to, but not within, a low-income community. Investments that qualify under this interpretation must primarily benefit low-income persons within the qualifying adjacent low-income community.

The Committee notes that under Section (6)(b), “Substantially all investments that an APIC makes shall be qualified low-income investments . . .” Rather than establishing a specific percentage in the statute, the intent of the Committee is that the term “substantially all” in this context be read in accordance with and reflect existing Treasury guidelines and Internal Revenue Service regulations governing investments in low- and moderate-income areas, such as those existing for investments made in empowerment zones, for example. Similarly, under Section 142 of the IRS Code,

95% of proceeds raised under the provision must be used for the purposes specified. The intent of the committee is that “substantially all” in the context of APIC investments be read to mean this approximately 95% level that currently permeates the world of tax-exempt financing.

In addition to providing additional guidance and Congressional direction as to where APIC investments should be made, the Committee was concerned with the legislative language governing selection of APICs. In the Committee’s view, the selection process for licensing APICs as set forth in the original legislation did not provide enough direction to the Secretary, either as to the types of entities that should be chosen or the criteria that should be used in making these determinations.

Regarding the types of entities that should be chosen as APICs, the Committee believed further specificity was required in the legislation to set forth examples of the underlying public purpose goals and nature of each APIC. Specifically, in Section 5, “Selection of APICs”, the Committee believed a further delineation of the types of goals that licensed APICs can be expected to pursue was appropriate. Therefore, Section 5(A)(6) now includes references to the following: creating jobs within 2 years of making an investment; enhancing economic competition, including the advancement of technology; promoting rural development; achieving certain environmental goals; and benefiting small business. By setting forth more clearly in statute the types of goals to be pursued and the activities in which these APICs are to be engaged, the Committee intends to provide additional guidance to the Secretary as to the types of APICs which should be considered favorably in the selection process.

In terms of specific selection criteria, the Committee believes that the criteria as set forth in the original legislation served as minimum eligibility requirements rather than as true measures for selecting among various applicants. For example, the Secretary under the original legislation could determine whether an applicant had qualified management prior to licensing the applicant as an APIC. The Committee, however, intends that the statute reflect the Secretary’s ability to make qualitative distinctions regarding management, allowing licensing of one APIC over another based on the existence of an exceptional management record and proven expertise in making investments benefiting low-income communities. In other words, the Committee believes the Secretary should choose among the applicants those APICs that meet not just the minimum statutory requirements, but whose investments are more likely to result in the most benefit to low- and moderate-income communities. With that in mind, the Managers’ Amendment added language in Section 5(d) establishing selection criteria the Secretary shall use to determine which APICs are to be licensed. An APIC applicant will be chosen for licensing based on the extent such applicant is expected to achieve the goals of the legislation by meeting or exceeding the selection criteria established under this subsection, which may include additional criteria established by the Secretary.

The Committee intends that rural and small communities not be unfairly or arbitrarily disadvantaged in the selection process. For this reason, Section 5(c)(2) was added by the Managers’ Amend-

ment to provide that when selecting APICs for licensing, the HUD Secretary to the extent practicable ensure geographical diversity and a mix of APICs so that both rural and urban communities may be served by this program. The Committee notes that in addition to large cities, there are also economically distressed areas in mid-sized and smaller metropolitan areas and non-metropolitan areas. Consideration of the needs of these communities should not be absent from APIC selection process. The intent of the Committee is that the Secretary strive for balance, fairness and diversity in the selection process.

In adding legislative language regarding the selection process, the Committee attempted to avoid imposing requirements as to exactly how many of each type of APIC should be chosen in the selection process. In the Committee's view, imposing numerical requirements would not be the proper approach because neither Congress nor the Administration can know in advance exactly what entities will apply to be licensed. The Committee made one important exception to this approach regarding the selection process for Native Americans. By definition, most of the lands on reservations would qualify for investments by APICs, as would rural and other low-income communities. However, the Committee was concerned that the added complexity of investing on Native American lands, including dealing with the Bureau of Indian Affairs, unfamiliarity with the varied tribal laws, and what in too many cases amounts to a cultural discomfort on the part of much of the finance community in doing business on Indian lands, were factors making business investment in Native Americans lands qualitatively different, and much more difficult, than investments in other low-income rural or urban communities. The Committee was concerned that the available applicants would not include entities with the capacity, or which viewed as their mission, to invest specifically on Native American lands. For this reason, the Managers' Amendment included a requirement that of those APICs selected in the first year, one would be a Native American Private Investment Company. The Committee believes that this would encourage application by would-be APICs that would serve Native Americans. Any such applicant would still need to meet all of the requirements for licensing contained in this bill. Native Americans should not be unintentionally excluded from benefiting under this program.

The Committee notes that under Section 5(b)(1) of the legislation, an APIC applicant must be a for-profit entity in order to be licensed as an APIC. The Committee notes that this is not intended to exclude for-profit entities controlled by non-profit organizations, such as through a subsidiary, partnership, or limited liability structure.

Regarding the application of federal securities laws to APICs, and for that matter to New Market Venture Capital companies ("NVCCs") created under other provisions of the Administration's New Markets Initiative, the Committee notes that nothing in this legislation alters or affects any Federal securities laws or regulations promulgated under the Federal securities laws. Further, federal securities laws continue to apply to NVCCs and APICs created under this legislation, to any securities issued by or on behalf of NVCCs or APICs, and to their distribution. NVCCs and APICs may seek to qualify for certain exclusions contained in the Investment

Company Act. Notably, in order for NVCCs and APICs to qualify for the exclusion from regulation under the Investment Company Act provided by Section 3(c)(7) of the Act, they must make only a private offering of their securities and each of their investors must meet the definition of “qualified purchaser” in Section 2(a)(51) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(51). The Committee expects that private offerings of NVCC and APIC securities (including those relying on the exclusion from regulation under the Act provided by Section 3(c)(1)) generally will entail an evaluation of whether the NVCC or APIC securities are suitable investments for the proposed investors.

ENSURING HUD’S CAPACITY TO ADMINISTER THE APIC PROGRAM

The Committee was concerned with HUD’s current capacity to administer the proposed APIC program. While the Committee notes that the Secretary has made great efforts to improve the management of HUD’s programs, there are still many areas which require attention. Adding another program to those already administered by HUD, and especially one as complex in terms of the required financial expertise as the program envisioned by this legislation, called for careful, bipartisan consideration. An alternative approach, which was indeed debated during the Committee’s markup of the legislation, was for the program to be administered by the Department of the Treasury rather than HUD. A crucial reason for having HUD administer the program, however, was the Department’s experience in dealing with distressed areas and with complex, large-scale community development investments, in particular. In order to address the Committee’s concerns regarding capacity and taxpayer safeguards, key changes to the original legislation were made by the Managers’ Amendment regarding program administration.

The Committee’s goal was to ensure that HUD had the expertise and the time available to it to structure and administer this program properly, and that the program not be so complex to administer in the beginning stages so that HUD would be able to develop capacity. Therefore, the legislation as revised by the Committee now imposes a first year limit on the number of APICs of 15, with no one APIC receiving more than 20% of the available credit subsidy. This accomplishes two things—it keeps the number of APICs at a manageable level in the first year, to give HUD experience in working with this program, and it diversifies the government’s risk by ensuring that no one APIC is too large. In addition, the Committee included a provision setting the effective date of the legislation at six months after enactment, so that HUD would have the time to develop adequate procedures in a deliberative fashion, working with the private sector as well as nonprofit and government entities important to community economic development.

The Committee also strengthened financial soundness provisions by setting forth the HUD Secretary’s duty to cooperate with Treasury in determining what procedures to follow to ensure competent management of APICs. Further changes include deleting the program feature to increase leverage for a class of APICs from 200% to 300%. The Committee wishes to approach conservatively on matters involving the federal government’s financial exposure, particularly at the program’s inception.

In order to ensure close oversight of the program, the Committee added a requirement for an Annual Report from the Secretary to Congress on the achievements of APICs, which would provide information on all APIC investments, the level of financial exposure, and other such matters. In addition, the legislation now requires a report by the General Accounting Office on the APIC program two years after enactment of the program. Finally, language granting the HUD Inspector General the authority to work with the Small Business Administration Inspector General in monitoring the APIC program at HUD was added in order to ensure that monitoring experience of these types of programs was available. The many changes made by the Committee to address the concerns with HUD's management of the program should give some assurance that this program will be structured and administered in a proper fashion, with the interests and protection of the taxpayer as priorities.

COMMITTEE CONSIDERATION AND VOTES (RULE XI, CLAUSE 2(1)(2)(B))

The Committee met in open session to mark up H.R. 2764, "America's Private Investment Companies Act" on April 12, 2000. The Committee considered H.R. 2764, as introduced, as the text for purposes of amendments.

During the markup, the Committee approved a total of 8 amendments, as follows: 3 amendments, including a managers amendment by voice vote, 3 amendments by unanimous consent, and, 2 amendments by recorded vote. The Committee also defeated a total of 3 amendments, as follows: 1 amendment by voice vote, and, 2 amendments by recorded vote. Two amendments were ruled non-germane on a point of order. Pursuant to the provisions of clause 2(1)(2)(B) of rule XI of the House of Representatives, the results of each roll call vote and the motion to report, together with the names of those voting for and those against are printed below:

ROLLCALL NO. 1

Date: April 12, 2000.

Measure: America's Private Investment Companies Act.

Motion by: Mr. LaFalce.

Description of Motion: Allows an APIC to be eligible for additional credit subsidy if in existence for at least two years, is a high performer and is selected through a competition created by the HUD Secretary.

Results: Adopted: Ayes 24, Nays 20.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Frank	Mr. McCollum
Mr. Kanjorski	Mr. Baker
Ms. Waters	Mr. Lazio
Mr. Sanders	Mr. Castle
Mrs. Maloney	Mr. King
Mr. Gutierrez	Mr. Royce
Ms. Velazquez	Mr. Lucas
Mr. Watt	Mr. Metcalf
Mr. Ackerman	Mr. Ney
Mr. Bentsen	Mrs. Kelly
Mr. Maloney	Mr. Ryun of Kansas
Ms. Hooley	Mr. Hill
Mr. Weygand	Mr. LaTourette
Mr. Sherman	Mr. Ryan of Wisconsin
Mr. Meeks, G.	Mr. Ose
Ms. Lee	Mrs. Biggert
Mr. Mascara	Mr. Terry
Mr. Inslee	Mr. Green
Ms. Schakowsky	Mr. Toomey
Mr. Moore	
Mrs. Jones	
Mr. Capuano	
Mr. Forbes	

ROLLCALL NO. 2

Date: April 12, 2000.

Measure: America's Private Investment Companies Act.

Motion by: Mr. Sanders.

Description of Motion: Allows non-profits to be eligible APICs.

Results: Defeated: Ayes 20, Nays 22, Pass 1.

YEAS

Mr. Hill
Mr. LaFalce
Mr. Frank
Mr. Kanjorski
Mr. Sanders
Mrs. Maloney
Ms. Velazquez
Mr. Watt
Mr. Bentsen
Mr. Maloney
Ms. Hooley
Mr. Weygand
Mr. Sherman
Ms. Lee
Mr. Inslee
Ms. Schakowsky
Mr. Moore
Mrs. Jones
Mr. Capuano
Mr. Forbes

NAYS

Mr. McCollum
Mrs. Roukema
Mr. Baker
Mr. Lazio
Mr. Castle
Mr. King
Mr. Royce
Mr. Lucas
Mr. Metcalf
Mr. Ney
Mr. Barr
Mrs. Kelly
Dr. Paul
Dr. Weldon
Mr. Ryun of Kansas
Mr. Riley
Mr. Ryan of Wisconsin
Mr. Ose
Mrs. Biggert
Mr. Terry
Mr. Green
Mr. Toomey

PASS: Mr. Leach.

ROLLCALL NO. 3

Date: April 12, 2000.

Measure: America's Private Investment Companies Act.

Motion by: Mr. Baker.

Description of Motion: Adds sunset of APIC program after 5-year period.

Results: Adopted: Ayes 24, Nays 23.

YEAS	NAYS
Mr. Leach	Mr. LaFalce
Mrs. Roukema	Mr. Vento
Mr. Bereuter	Mr. Frank
Mr. Baker	Mr. Sanders
Mr. Lazio	Mrs. Maloney
Mr. Castle	Mr. Gutierrez
Mr. King	Ms. Velazquez
Mr. Lucas	Mr. Watt
Mr. Ney	Mr. Bentsen
Mr. Barr	Mr. Maloney
Mrs. Kelly	Ms. Hooley
Dr. Paul	Mr. Weygand
Dr. Weldon	Mr. Sherman
Mr. Ryun of Kansas	Mr. Meeks, G.
Mr. Riley	Ms. Lee
Mr. Hill	Mr. Mascara
Mr. LaTourette	Mr. Inslee
Mr. Ryan of Wisconsin	Ms. Schakowsky
Mr. Ose	Mr. Moore
Mrs. Biggert	Mr. Gonzalez
Mr. Terry	Mrs. Jones
Mr. Green	Mr. Capuano
Mr. Toomey	Mr. Forbes
Mr. Kanjorski	

ROLLCALL NO. 4

Date: April 12, 2000.

Measure: America's Private Investment Companies Act.

Motion by: Mr. Ryan of Wisconsin.

Description of Motion: Amendment in the nature of a substitute to require a GAO study.

Results: Defeated: Ayes 15, Nays 31.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Bereuter	Mrs. Roukema
Mr. Royce	Mr. Lazio
Mr. Barr	Mr. King
Mrs. Kelly	Mr. LaFalce
Dr. Paul	Mr. Vento
Dr. Weldon	Mr. Frank
Mr. Ryun of Kansas	Mr. Kanjorski
Mr. Riley	Ms. Waters
Mr. Ryan of Wisconsin	Mr. Sanders
Mr. Sweeney	Mrs. Maloney
Mrs. Biggert	Mr. Gutierrez
Mr. Terry	Ms. Velazquez
Mr. Green	Mr. Watt
Mr. Toomey	Mr. Ackerman
	Mr. Bentsen
	Mr. Maloney
	Ms. Hooley
	Ms. Carson
	Mr. Weygand
	Mr. Sherman
	Mr. Meeks, G.
	Ms. Lee
	Mr. Mascara
	Mr. Inslee
	Ms. Schakowsky
	Mr. Moore
	Mr. Gonzalez
	Mrs. Jones
	Mr. Capuano
	Mr. Forbes

A motion to adopt H.R. 2764 and favorably report the bill, as amended, to the House was approved by a recorded vote of 33 Ayes and 14 Nays on April 12, 2000.

YEAS

Mr. Leach
 Mr. Baker
 Mr. Lazio
 Mr. King
 Mrs. Kelly
 Mr. Riley
 Mr. LaFalce
 Mr. Vento
 Mr. Frank
 Mr. Kanjorski
 Ms. Waters
 Mr. Sanders
 Mrs. Maloney
 Mr. Gutierrez
 Ms. Velazquez
 Mr. Watt
 Mr. Ackerman
 Mr. Bentsen
 Mr. Maloney
 Ms. Hooley
 Ms. Carson
 Mr. Weygand
 Mr. Sherman
 Mr. Meeks, G.
 Ms. Lee
 Mr. Mascara
 Mr. Inslee
 Ms. Schakowsky
 Mr. Moore
 Mr. Gonzalez
 Mrs. Jones
 Mr. Capuano
 Mr. Forbes

NAYS

Mr. McCollum
 Mrs. Roukema
 Mr. Bereuter
 Mr. Royce
 Mr. Barr
 Dr. Paul
 Dr. Weldon
 Mr. Ryun of Kansas
 Mr. Ryan of Wisconsin
 Mr. Sweeney
 Mrs. Biggert
 Mr. Terry
 Mr. Green
 Mr. Toomey

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI (and clause 4(c)(2) of rule X) of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the constitutional authority for Congress to enact this legislation is derived from the general welfare clause (Article I, Sec. 8).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority for increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COSTS ESTIMATE AND UNFUNDED MANDATE ANALYSIS

The cost estimate pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974 is attached herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 2000.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2764, the America's Private Investment Companies Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippin, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2764—America's Private Investment Companies Act

Summary: H.R. 2764 would establish the America's Private Investment Companies (APIC) program within the Department of Housing and Urban Development (HUD) to provide federal loan guarantees to qualified venture capital corporations that invest in low-income communities. The bill would authorize appropriations of \$36 million a year over the 2000–2004 period to cover the subsidy costs of such loan guarantees. For each fiscal year, HUD could make commitments to guarantee loans only to the extent that the total loan principal, any part of which is guaranteed, would not exceed \$1 billion or the amount specified in appropriation acts. The bill would also authorize the appropriation of \$1 million annually over the five-year period for administrative expenses.

CBO estimates that implementing H.R. 2764 would cost about \$145 million for loan subsidy and administrative costs over the 2000–2005 period, assuming appropriation of the necessary amounts. Because H.R. 2764 could affect offsetting receipts (a form of direct spending), pay-as-you-go procedures would apply. CBO estimates, however, that any impact on direct spending would not be

significant. H.R. 2764 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of the mandate would not be significant. The bill does not contain any new private-sector mandate as defined by UMRA.

Estimated cost to the Federal Government: For the purpose of this estimate, CBO assumes that H.R. 2764 will be enacted in fiscal year 2000 and that funds will be provided for its implementation each year. The estimated budgetary impact of H.R. 2764 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, in millions of dollars					
	2000	2001	2002	2003	2004	2005
Spending for APIC Under Current Law:						
Budget Authority ¹	20	0	0	0	0	0
Estimated Outlays	2	6	8	4	0	0
Proposed Changes:						
Estimated Authorization Level	17	38	38	38	39	3
Estimated Outlays	1	12	24	34	39	35
Spending Under H.R. 2764:						
Estimated Authorization Level ¹	37	38	38	38	39	3
Estimated Outlays	3	18	32	38	39	35

¹ For 2000 \$20 million has been appropriated for this program contingent upon authorization of the APIC program before June 30, 2000.

Basis of estimate: Under procedures established by the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the estimated long-term cost to the government, calculated on a net present value basis. Based on the past performance of similar Small Business Administration (SBA) programs, CBO expects that APIC borrowers would default on between 25 percent and 30 percent of guaranteed loans. In the event of a default, CBO expects that the agency would liquidate the APIC investments, but this process would take a number of years. Consequently, CBO estimates that HUD would recover only about 50 percent of the loan balance three years after default. In addition, based on information from the Administration, we assume that HUD would charge a 1 percent origination fee when the loan is disbursed and a 0.77 percent annual fee. Under these assumptions, the program would operate at a subsidy cost equal to 5 percent of the amounts guaranteed.

H.R. 2764 would authorized the appropriation of \$36 million annually for the subsidy cost of APIC loan guarantees, and this estimate assumes such appropriations. CBO estimates that this amount would be sufficient to cover the subsidy costs of \$720 million of loan guarantees under this program. (The estimated subsidy cost to guarantee \$1 billion in loans under the APIC program would be about \$50 million annually.) While the bill would authorize the appropriation of \$1 million annually over the 2000–2004 period for administrative costs, CBO estimates this amount would not be sufficient to administer these loan guarantees.

Based on the operation of similar SBA programs, we estimate that \$2 million to \$3 million would be needed each year to administer these loan guarantees, and that these costs would continue over the 10-year term of the guarantees.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. Section 111 would provide for civil penalties against APICs that fail to comply with regulations that would be established under H.R. 2764. Payments of these civil penalties would be recorded as miscellaneous receipts to the Treasury. CBO expects that any increase in penalty collections as a result of this provision would not be significant.

Impact on State, local, and tribal governments: H.R. 2764 would preempt State laws with regard to the seniority of debt issued by APICs. Such a preemption of State law is an intergovernmental mandate as defined in UMRA, but CBO estimates that this mandate would impose no significant costs on State, local, or tribal governments.

The bill also provides that State and local governments may choose to assume responsibility for environmental reviews needed for certain projects and activities financed by an APIC. Any costs to carry out such environmental reviews would be incurred voluntarily.

Impact on the private sector: H.R. 2764 contains no new private-sector mandates as defined in URMA.

Estimate prepared by: Federal costs: Lanette Keith and Mark Hadley; impact on State, local, and tribal governments: Victoria Heid Hall; and impact on the private sector: Patrice Gordon.

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

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of Section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under Section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

SECTION-BY-SECTION

Section 1. Short title

The act may be cited as the America's Private Investment Companies Act.

Section 2. Findings and purpose

Section 2 finds that (1) people living in distressed areas, both urban and rural, characterized by high levels of joblessness, poverty, and low incomes, have not adequately benefited from economic expansion experienced by the Nation as a whole; (2) the costs of joblessness and poverty to our Nation are very high; and (3) there are significant untapped markets in our Nation, and many of these are in areas that are underserved by institutions that can make equity and credit investments.

Purposes of this title are to (1) license private for-profit community development entities that will focus on making equity and

credit investments for large-scale business developments that benefit low-income communities; (2) provide credit enhancement for those entities for use in low-income communities; and (3) provide a vehicle under which the economic and social returns on financial investments made pursuant to this Act may be available both to the investors in these entities and to the residents of the low-income communities.

Section 3. Definitions

Defines terms used in legislation, including “Administrator”, “agency”, “APIC”, “community development entity”, “HUD”, “license”, “low-income community”, “low-income person”, “private equity capital”, “qualified active business”, “qualified debenture”, “qualified low-income community investment”, and “Secretary”.

Section 4. Authorization

Authorizes the Secretary of HUD to license and regulate America’s Private Investment Companies (“APICs”). The number of APICs licensed at any one time would depend upon the amount of budget authority available to support the total credit subsidy provided to the APICs, subject to a first year limitation of 15 APICs. After the initial appropriation, the Secretary is authorized to license and allocate credit subsidy to additional APICs, or, as provided, increase the credit subsidy allocated to an APIC as reward for high performance. Any such credit subsidy increase shall be provided only to an APIC that has been licensed for not less than two years, and pursuant to a competition among eligible APICs. The Secretary shall establish criteria for selecting among APICs eligible for a credit subsidy increase, which criteria shall include such factors as the financial soundness and performance of the APICs as measured by achievement of the public performance goals required under the Act.

Requires that the HUD Secretary consult with the Administrator of the Small Business Administration and the Secretary of the Treasury in establishing regulations, requirements or procedures regarding the financial soundness and management of APICs. Authorizes budget authority of \$36 million in credit subsidy for Fiscal Year 2000 to guarantee an estimated \$1 billion in debt. An additional \$36 million would be authorized to be appropriated for each of Fiscal Years 2001–2003, with an additional \$1 million authorized for the administrative expenses incurred in carrying out the Act for FY 2000–FY 2003. Requires APICs to be regulated by HUD in cooperation with SBA and the Department of the Treasury. The Secretary is authorized to impose fees and charges for the operation of APICs.

Section 5. Selection of APICs

Establishes procedures for selection of APICs, sets forth minimum eligibility requirements, and sets forth selection criteria to be used by the Secretary in selecting among applicants for licensing as APICs. An entity applying for an APIC license must: (1) be a private, for-profit entity that qualifies as a “community development entity” as defined in the legislation; (2) have a minimum private equity capital of \$25 million; (3) have qualified financial management, with experience in direct equity investment and portfolio

management and expertise in community development settings, as determined by the Secretary; (4) be structured to preclude financial conflict of interests between the APIC and its managers or investors; (5) submit an investment strategy with evaluation benchmarks; (6) submit a statement of public purpose goals, examples of which are delineated in the statute; (7) agree to comply with other federal requirements imposed from time to time (i.e. Executive Orders or OMB circulars); and (8) satisfy any other application criteria that the Secretary may impose by regulation or notice.

The Secretary shall select eligible entities for licensing based on a competition. Selections shall be made on the basis of the extent to which the entity is expected to meet or exceed the selection criteria set forth in the legislation. Selection criteria include factors such as the APICs capacity, investment strategy, public purpose goals, and other criteria the Secretary may establish to carry out the purposes of this Act. To the extent practicable, in selecting APICs the Secretary shall strive for geographic diversity and a diversity of the types of APICs chosen so that both rural and urban communities are served by the program. Of those APICs selected in the first year, at least one must be devoted primarily to making investments on Native American lands.

Section 6. Operations of APICs

Sets forth requirements for the operation of APICs. Requires that substantially all APIC investments that use government-guaranteed proceeds be in qualified low- to moderate-income (LMI) areas, and prohibits an APIC from having an investment in any one business that would amount to more than 35% of the APIC's equity capital plus the limit of outstanding debt allowable (the leverage limit) under Section 106(c)(2) of this title.

Provides that an APIC may issue debentures guaranteed by the Secretary pursuant to the provisions of the Act. The total amount of debentures that an APIC may have outstanding at any one time shall not exceed 200% of the equity capital of the APIC. An APIC may not have more than \$300 million in face value of debentures issued at any one time. Sets forth requirements for repayment by APIC of debt.

Includes an "anti-pirating" provision prohibiting APICs from using funds to make an investment that would assist directly in the relocation of any industrial or commercial plant, facility or operation from one area to another if such relocation would result in a significant loss of employment in the labor area from which the relocation occurs. Also provides for reuse of debenture proceeds of sale of Treasury securities and excludes APIC from the definition of debtor under bankruptcy provisions.

Section 7. Credit enhancement by the Federal Government

Authorizes HUD to make commitments to guarantee the timely payment of all principal and interest on qualified debentures issued by the APICs. The qualified debentures guaranteed by HUD would be senior to any other debt or equity. The qualified debentures could be issued by APICs for up to 21 years and could be pooled and sold.

Section 8. APIC requests for guarantee actions

Sets forth procedures for APICs to request loan guarantees from HUD, which shall include a description of the manner in which the APIC intends to use the proceeds from such debentures and a certification from the APIC that it is in substantial compliance with (1) the terms of this Act and applicable laws; (2) the terms and conditions of its license; (3) requirements relating to the allocation and use of New Market Tax Credits. The APIC must also provide any other requirements established by the Secretary. Sets forth procedures for compliance with provisions of the National Environmental Policy Act of 1969 regarding environmental reviews.

Section 9. Examination and monitoring of APICs

Requires that the Secretary examine and monitor the activities of APICs for compliance with sound financial management practices and for satisfaction of program goals. Requires the Secretary to establish annual or more frequent reporting requirements for APICs. Requires that each APIC have an independent annual audit conducted annually. The Secretary, in consultation with the Administrator of the SBA and the Secretary of the Treasury, shall establish requirements and standards for such audits. Not less than every two years, the Secretary shall examine the operations and portfolio of each APIC to assure compliance with sound financial management practices.

Provides that in carrying out its monitoring of HUD's responsibilities under this Act, the Inspector General of HUD shall consult, as appropriate, with the Inspectors General of the Department of the Treasury or the Small Business Administration, and may enter into memoranda of understanding as may be necessary to carry out this function. Requires the Secretary to report to Congress annually regarding the operations, activities, financial health and achievements of APICs, listing each investment made by each APIC. Requires the General Accounting Office, not later than two years after the date of enactment of the Act, to submit a report to Congress regarding the operation of the APIC program.

Section 10. Penalties

Authorizes the Secretary to impose penalties on any APIC that commits an act of fraud, mismanagement or noncompliance with regulations. Penalties include civil monetary penalties not to exceed \$10,000, cease-and-desist orders, suspension or revocation of an APIC's license for very serious infractions, or other penalties that the Secretary determines to be less burdensome than the aforementioned penalties.

Section 11. Effective date

Provides that the Act shall take effect six months after the date of enactment. Authority of the Secretary to issue regulations, standards, guidelines or licensing requirements, and the authority of any official to enter into agreements or memoranda of understanding regarding such issuances, shall take effect upon enactment of the legislation.

Section 12. Sunset

Provides that the Secretary may not license any APIC, nor provide credit subsidy for any APIC, after the expiration of the five-year period beginning upon the date the Secretary awards the first APIC license. The section does not affect any license or credit subsidy provided for an APIC before the expiration of such period.

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):

SECTION 12 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT

SEC. 12. (a) * * *

* * * * *

(e) DEFINITIONS.—For purposes of this section:

(1) * * *

(2) ASSISTANCE.—The term “assistance” means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary *or any license provided under the America’s Private Investment Companies Act.*

* * * * *

SECTION 109 OF TITLE 11, UNITED STATES CODE

§ 109. Who may be a debtor

(a) * * *

* * * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, *America’s Private Investment Company licensed under the America’s Private Investment Companies Act*, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

(3) * * *

* * * * *

ADDITIONAL VIEWS

The approval of the APIC legislation by the House Committee on Banking and Financial Services represents a bold effort to bring economic opportunities and quality jobs to individuals and communities being left behind during our nation's strong economic expansion. It also represents the first committee approval of any portion of the Administration's New Markets Initiative.

Despite strong income and wage growth for much of our population, millions of Americans still do not have access to jobs that pay decent wages and offer real opportunities for advancement. And, many urban, suburban, and rural communities and neighborhoods are not fully participating in our economic prosperity. APIC is a private sector oriented approach to leverage scarce federal resources to foster billions of dollars of investments in a way that will bring hope and opportunity to those persons and communities being left behind.

APIC is structured to ensure that federal resources are targeted to create opportunities for lower-income families and individuals. "Substantially all" investments made with APIC-guaranteed loans or equity used to support such loans must be made in "low-income communities"—defined as census tracts with poverty rate of excess of 20% or median family income levels below the greater of 80% of either the local or state median. And, successful APIC licensees must pursue public purpose goals, which include creating good paying jobs, making investments in low-income communities, and working with community-based organizations and residents.

APIC is structured to avoid federal micromanagement of individual investment decisions, and instead give APIC investment companies the flexibility to make market-oriented investments, with maximal local impact. Once an APIC meets the rigorous financial and managerial criteria required for licensee selection, the APIC uses its expertise to make autonomous investment decisions, subject only to the market discipline of having to repay debentures and meeting public purpose goals.

APIC is structured to make maximum use of scarce federal resources. Leverage and equity requirements ensure that federal resources create substantial amounts of private sector equity investments. Use of federal loan guarantees (as opposed to outright federal grants) imposes market discipline and dramatically limits the need for federal appropriations of funds. The result is that a federal credit subsidy of only \$36 million a year, as determined by OMB, will create at least \$7.5 billion in targeted investments over the next five years.

Finally, APIC is structured to protect the federal taxpayer. Successful APIC licensees are required to provide at least \$25 million in private equity capital, which is put at risk of loss ahead of any federal liability under the guarantee debentures. APICs must dem-

onstrate that their management must be qualified, and have the financial expertise, experience, and capability to make investments in low-income communities and use federal loan guarantees under the program.

As sponsors of the APIC legislation, we believe that H.R. 2764, as introduced, was soundly drafted, with substantial management and financial controls on the APICs themselves, as well as appropriate federal oversight. For example, H.R. 2764 as introduced included a number of provisions to ensure sound federal oversight. Section 109, “Examination and Monitoring of APICs” directs the HUD Secretary to examine and monitor the operations and activities of APICs for compliance with sound financial management practices and program goals—through audits, performance agreements, and license agreements. HUD is specifically authorized to establish annual or more frequent audit and reporting requirements for APICs, including audits, in meeting this obligation.

Furthermore, at least every two years, HUD is required to examine the operations and portfolio of each APIC for compliance with sound financial management practices and for compliance with the act. And, under Section 110 of the original bill, HUD is given authority to take appropriate action in response to fraud, mismanagement, or non-compliance on the part of any APIC, including the authority to assess civil money penalties, require divestiture, and revoke a license.

Despite these safeguards, we were more than willing to work with the majority to craft a managers’ amendment to build on the original bill’s financial and managerial controls and federal oversight. For example, the managers’ amendment specifically requires each APIC to conduct an annual independent audit. It also requires the HUD Secretary to submit an annual report to Congress regarding the operations, activities, financial health, and achievements of the program. The manager’s amendment orders a GAO report on the program, and requires the HUD IG, in its traditional oversight role, to consult with the Treasury and SAB IG with respect to the APIC program. Finally, the managers’ amendment expands on the Section 110 penalties dealing with potential fraud, mismanagement, or noncompliance.

The other major focus of the managers’ amendment was to provide more detail about various provisions or definitions in the bill. As sponsors of the original legislation, we believe H.R. 2764 includes very clear provisions to target APIC investments to low-income communities and persons, and to set forth investment goals which are designed to foster good paying jobs and involve community-based organizations and residents. These targeting provisions are at the heart of the bill’s goal of helping those individuals and communities being left behind our economic recovery.

However, we view the revisions included in the managers’ as constructive. Most notably, the criteria set out for the selection of APICs are re-organized to more clearly delineate minimum threshold requirements from those criteria that are used to select those applicants best qualified to meet the goals of the program. The managers’ amendment also adds or modifies certain definitions, including “private equity capital,” “low-income community,” and “low-

income person.” These changes are all consistent with the original intent of the bill.

The resulting legislation, after adoption of the managers’ amendment, retains the core provisions of H.R. 2764, as originally introduced. This bill holds great promise for unleashing private sector investments for the benefit of low-income persons and communities. Last year’s VA–HUD appropriations bill already provided the credit subsidy for the first round of APIC licensing, subject only to program authorization.

Therefore, we urge prompt Congressional action to enact APIC into law.

JOHN J. LAFALCE.
PAUL E. KANJORSKI.

ADDITIONAL VIEW

There are some encouraging developments that this bill illustrates such as the bipartisan approach and the shift of attention to our own constituents. However, the best way to help our constituents would be to follow sound fiscal and credit policies that create the best conditions for economic development; low taxes, limited government and sound money. This bill does not follow that approach.

The federal budget is an example of economic scarcity: unlimited wants and limited resources. Every dollar allocated for one program comes at the expense of another. With this understanding in mind, I introduced an amendment that would have shifted our priorities from exporting U.S. jobs to one of developing jobs at home. My amendment would have established a trust fund for APIC and recommended transferring \$2.5 billion from the OPIC trust fund to the APIC fund.

When Congress created the Overseas Private Investment Corporation (OPIC), the U.S. Treasury established a “trust fund” for it and gave the trust fund billions of non-marketable securities (U.S. bonds). The trust fund retained the earnings from the bonds in order to fund OPIC—despite claims that the program was “self-sustaining” and “not operating at taxpayer expense.” It was, of course, the taxpayers who pay the bonds whose interest funds the program.

According to OPIC’s last annual report, it had over \$4 billion in assets (97% of them U.S. Treasury securities) in 1999, up from \$3.7 billion in 1998. Revenues totaled almost \$400 million (up from \$365 million the previous year) was interested “earned” on U.S. Treasury securities contributing about half of its revenues. According to the February Monthly Statement of the Public Debt, the “Overseas Private Investment Corporation, Insurance and Equity Non Credit Account” (the OPIC trust fund) was issued \$3.2 billion with about \$3 billion outstanding.

Now that OPIC has had a chance to establish itself, a portion of the nest egg gifted to it by Treasury should be used to fund an APIC trust fund (with a corresponding offset in appropriations) and the remainder shifted to the Social Security trust fund.

RON PAUL.

DISSENTING VIEWS

The American Private Investment Companies' (APIC) proposed goal of bringing large-scale businesses to economically distressed communities is a laudable and important goal. However, H.R. 2764, the American Private Investment Companies Act, subsequently incorporated into H.R. 2848, the New Markets Initiative as Title III, accepts the various impediments to investing in the inner city and rural communities and simply offers businesses a subsidy for risky investment. Further, the legislation duplicates several existing programs. It has not been adequately scored to take government loan guarantee risk into consideration, and is to be administered by the Department of Housing and Urban Development (HUD), which is inadequately prepared for the responsibility.

A lack of capital is not keeping businesses from investing in these areas, especially not the large-scale, established businesses that the APIC program would target—the problem is the high cost of doing business. Instead of attacking the fundamental problems of these areas, a program such as APIC reduces urban and rural areas' incentives to change what makes investment in these communities difficult in the first place—penalizing tax rates, burdensome regulatory policies, a lack of public infrastructure, and high crime rates.

Further, a lack of venture capital is not an issue. The companies the APIC proposal targets are not entrepreneurial start-ups, nor are they small businesses. They are companies like Safeway or Wal-Mart. Location of venture capital is also not an issue. In today's information economy where technology facilitates long-distance interpersonal communication, venture capital flows to where it can earn a high rate of return, whether the investment is in Chicago or the Appalachian Mountains.

At least eight federal programs already exist that have similar goals as the APIC program. We understand each program is structured slightly differently and awards loans and grants differently than APICs, but the outcome remains the same. These include Community Development Block Grants (CDBG) Section 108 Loan Guarantees, Community Development Financial Institutions (CDFIs), Small Business Investment Companies (SBICs), and the Business and Industry Loan program administered by the USDA.

The APIC proposal creates quasi-GSEs, by relying on government subsidies to back "private" loans. This is not a private market initiative. HUD is granted authority to create a secondary market in APIC debt, similar to how Ginnie Mae guarantees mortgage debt. Creation of this secondary market further lowers the cost of capital, but increases taxpayer risk.

In fact, under H.R. 2764, APICs are expected to lose \$36 million for every \$1 billion invested. CBO believes that this loss could be greater if the true value of risk is calculated. In addition, CBO

wrote that although the APIC legislation “authorizes the appropriation of \$36 million annually for the subsidy cost of loan guarantees and \$1 million annually for administrative expenses . . . based on the experience of similar loan guarantee programs administered by the SBA. CBO estimates that the subsidy cost to guarantee \$1 billion in loans under the APIC program would cost about \$50 million annually.” Based on SBA programs, “CBO expects that APIC borrowers would default on between 25% and 30% of the guaranteed loans.”

To put this in perspective, CRS contrasts the expected 3.6% subsidy rate with both CDFIs and SBICs. CDFIs have a FY 1999 subsidy rate of over 39% and SBICs have a subsidy rate of 25% (as of 1996). Accordingly, CRS, as well as CBO, the proposed 3.6% subsidy rate far too low.

Finally, HUD is a highly political department and has demonstrated a lack of success in handling new programs, such as the community builders program. Unlike the Treasury Department or the Small Business Administration (SBA), HUD has no expertise in managing a large-scale business investment program.

For the reasons outlined above, we believe that the APIC program is not the preferred means of addressing poverty and unemployment in economically distressed urban and rural areas. Its band-aid approach as a government subsidized investment program does not reduce the cost of business in these areas, aside from reducing the cost of capital for large companies who can easily find funds in the private market. The best way to promote economic growth is to reduce federal, state and local tax and regulatory burdens, which would encourage local entrepreneurs—with their own capital at risk—to determine what works best in their community.

PAUL RYAN.
ED ROYCE.
JIM RYUN.
PAT TOOMEY.
MARK GREEN.
RON PAUL.
BOB BARR.
DOUG OSE.