**(c) Delay of public disclosure under exceptional circumstances**

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

**(d) Documents filed under seal in public enforcement hearings**

The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

**(e) Retention of documents**

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subchapter or any other law.

**(f) Disclosures to Congress**

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, § 1379, Oct. 28, 1992, 106 Stat. 3993.)

**§ 4640. Notice of service**

Any service required or authorized to be made by the Director under this subchapter may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, § 1379A, Oct. 28, 1992, 106 Stat. 3993.)

**§ 4641. Subpoena authority**

**(a) In general**

In the course of or in connection with any administrative proceeding under this subchapter, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

**(b) Witnesses and documents**

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

**(c) Enforcement**

The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith.

**(d) Fees and expenses**

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

(Pub. L. 102–550, title XIII, § 1379B, Oct. 28, 1992, 106 Stat. 3994.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4517 of this title.

## CHAPTER 47—COMMUNITY DEVELOPMENT BANKING

### SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

Sec.
4701. Findings and purposes.
(a) Findings.
(b) Purpose.
4702. Definitions.
4703. Establishment of national Fund for community development banking.
(a) Establishment.
(b) Management of Fund.
(c) General powers.
(d) Advisory Board.
(e) Omitted.
(f) Government Corporation Control Act exemption.
(g) Limitation of Fund and Federal liability.
(h) Prohibition on issuance of securities.
(i) Omitted.
(j) Assisted institutions not United States instrumentalities.
(k) Transition period.
4704. Applications for assistance.
(a) Form and procedures.
(b) Minimum requirements.
(c) Preapplication outreach program.
4705. Community partnerships.
(a) Application.
(b) Application requirements.
(c) Selection criteria.
(d) Limitation on distribution of assistance.
(e) Other requirements and limitations.
4706. Selection of institutions.
(a) Selection criteria.
(b) Geographic diversity.
4707. Assistance provided by Fund.
(a) Forms of assistance.
(b) Uses of financial assistance.
(c) Uses of technical assistance.
(d) Amount of assistance.
(e) Matching requirements.
(f) Terms and conditions.

Sec.
(g) Authority to sell equity investments and loans.
(h) No authority to limit supervision and regulation.
4708. Training.
(a) In general.
(b) Program activities.
(c) Participation.
(d) Contracting.
(e) Coordination.
(f) Regulatory fee for providing training services.
4709. Encouragement of private entities.
4710. Collection and compilation of information.
4711. Investment of receipts and proceeds.
(a) Establishment of account.
(b) Investments.
(c) Availability.
4712. Capitalization assistance to enhance liquidity.
(a) Assistance.
(b) Selection.
(c) Amount of assistance.
(d) Audit and report requirements.
(e) Limitations on liability.
(f) Use of proceeds.
4713. Incentives for depository institution participation.
(a) Function of Administrator.
(b) Provisions relating to administration of this section.
4714. Recordkeeping.
(a) In general.
(b) User profile information.
(c) Access to records.
(d) Review.
(e) Reporting.
4715. Special provisions with respect to institutions that are supervised by Federal banking agencies.
(a) Consultation with appropriate agencies.
(b) Requests for information, reports, or records.
(c) Exclusion for examination reports.
(d) Sharing of information.
(e) Disclosure prohibited.
(f) Privilege maintained.
(g) Exceptions.
(h) Sanctions.
(i) Safety and soundness considerations.
4716. Studies and reports; examination and audit.
(a) Annual report by Fund.
(b) Optional studies.
(c) Native American lending study.
(d) Investment, governance, and role of Fund.
(e) Consultation.
(f) Examination and audit.
4717. Enforcement.
(a) Regulations.
(b) Administrative enforcement.
4718. Authorization of appropriations.
(a) Fund authorization.
(b) Community Development Credit Union Revolving Loan Fund.
(c) Budgetary treatment.

SUBCHAPTER II—SMALL BUSINESS CAPITAL ENHANCEMENT

4741. Findings and purposes.
(a) Findings.
(b) Purposes.
4742. Definitions.
4743. Approving States for participation.
(a) Application.
(b) Approval criteria.
(c) Existing State programs.
(d) Prior appropriations requirement.
(e) Amendments to agreements.
4744. Participation agreements.
(a) In general.
(b) Participating financial institutions.
4745. Terms of participation agreements.
(a) In general.
(b) Establishment of separate reserve funds.
(c) Investment authority.
(d) Earned income and interest.
(e) Loan terms and conditions.
(f) Enrollment process.
(g) Coverage amount.
(h) Premium charges.
(i) Restrictions.
(j) State contributions.
(k) Submission of claims.
(*l*) Elements of claims.
(m) Payment of claims.
(n) Denial of claims.
(*o*) Subsequent recovery of claim amount.
(p) Participation agreement terms.
(q) Termination clause.
(r) Allowable withdrawals from fund.
(s) Grandfathered provision.
4746. Reports.
(a) Reserve funds report.
(b) Annual data.
(c) Form.
4747. Reimbursement by Fund.
(a) Reimbursements.
(b) Size of assisted borrower.
(c) Three-year maximum.
(d) Loans totaling less than $2,000,000.
(e) Loans totaling more than $2,000,000.
(f) Other amounts.
4748. Reimbursement to Fund.
(a) In general.
(b) Factor.
(c) Use of reimbursements.
4749. Regulations.
4750. Authorization of appropriations.
(a) Amount.
(b) Budgetary treatment.

## SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

### § 4701. Findings and purposes

#### (a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

#### (b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions

Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

(Pub. L. 103–325, title I, § 102, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in original ''this subtitle'', meaning subtitle A of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to this subchapter. For complete classification of this subtitle to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 103–325 provided that: ''This Act [see Tables for classification] may be cited as the 'Riegle Community Development and Regulatory Improvement Act of 1994'.''

Section 101 of title I of Pub. L. 103–325 provided that: ''This subtitle [subtitle A (§§ 101–121) of title I of Pub. L. 103–325, enacting this subchapter and section 1772c–1 of this title, amending sections 1766 and 1834a of this title, section 5313 of Title 5, Government Organization and Employees, section 11 of Pub. L. 95–452 set out in the Appendix to Title 5, section 657 of Title 18, Crimes and Criminal Procedure, and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 11 of Pub. L. 95–452 set out in the Appendix to Title 5] may be cited as the 'Community Development Banking and Financial Institutions Act of 1994'.''

## § 4702. Definitions

For purposes of this subchapter, the following definitions shall apply:

**(1) Administrator**

The term ''Administrator'' means the Administrator of the Fund appointed under section 4703(b) of this title.

**(2) Appropriate Federal banking agency**

The term ''appropriate Federal banking agency'' has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

**(3) Affiliate**

The term ''affiliate'' has the same meaning as in section 1841(k) of this title.

**(4) Board**

The term ''Board'' means the Community Development Advisory Board established under section 4703(d) of this title.

**(5) Community development financial institution**

**(A) In general**

The term ''community development financial institution'' means a person (other than an individual) that—

(i) has a primary mission of promoting community development;

(ii) serves an investment area or targeted population;

(iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;

(iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and

(v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

**(B) Conditions for qualification of holding companies**

**(i) Consolidated treatment**

A depository institution holding company may qualify as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

**(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule**

No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

**(C) Conditions for subsidiaries**

No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).

**(6) Community partner**

The term ''community partner'' means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

**(7) Community partnership**

The term ''community partnership'' means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

**(8) Depository institution holding company**

The term ''depository institution holding company'' has the same meaning as in section 1813 of this title.

**(9) Development services**

The term ''development services'' means activities that promote community development and are integral to lending or investment activities, including—

(A) business planning;

(B) financial and credit counseling; and

(C) marketing and management assistance.

**(10) Fund**

The term ''Fund'' means the Community Development Financial Institutions Fund established under section 4703(a) of this title.

**(11) Indian reservation**

The term ''Indian reservation'' has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

**(12) Indian tribe**

The term ''Indian tribe'' means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**(13) Insured community development financial institution**

The term ''insured community development financial institution'' means any community development financial institution that is an insured depository institution or an insured credit union.

**(14) Insured credit union**

The term ''insured credit union'' has the same meaning as in section 1752(7) of this title.

**(15) Insured depository institution**

The term ''insured depository institution'' has the same meaning as in section 1813 of this title.

**(16) Investment area**

The term ''investment area'' means a geographic area (or areas) including an Indian reservation that—

(A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and

(ii) has significant unmet needs for loans or equity investments; or

(B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of title 26.

**(17) Low-income**

The term ''low-income'' means having an income, adjusted for family size, of not more than—

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

(B) for nonmetropolitan areas, the greater of—

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

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

**(18) State**

The term ''State'' has the same meaning as in section 1813 of this title.

**(19) Subsidiary**

The term ''subsidiary'' has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

**(20) Targeted population**

The term ''targeted population'' means individuals, or an identifiable group of individuals, including an Indian tribe, who—

(A) are low-income persons; or

(B) otherwise lack adequate access to loans or equity investments.

**(21) Training program**

The term ''training program'' means the training program operated by the Fund under section 4708 of this title.

(Pub. L. 103–325, title I, § 103, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in par. (6), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

The Alaska Native Claims Settlement Act, referred to in pars. (11) and (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1834a of this title.

## § 4703. Establishment of national Fund for community development banking

**(a) Establishment**

**(1) In general**

There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

**(2) Wholly owned Government corporation**

The Fund shall be a wholly owned Government corporation in the executive branch and

shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

**(b) Management of Fund**

**(1) Appointment of Administrator**

The management of the Fund shall be vested in an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall not engage in any other business or employment during service as the Administrator.

**(2) Chief financial officer**

The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

**(3) Other officers and employees**

The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

**(4) Expedited hiring**

During the 2-year period beginning on September 23, 1994, the Administrator may—

(A) appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

**(c) General powers**

In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of this chapter;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

**(d) Advisory Board**

**(1) Establishment**

There is established an advisory board to the Fund to be known as the Community Development Advisory Board, which shall be operated in accordance with the provisions of the Federal Advisory Committee Act, except that section 14 of that Act does not apply to the Board.

**(2) Membership**

The Board shall consist of 15 members, including—

(A) the Secretary of Agriculture or his or her designee;

(B) the Secretary of Commerce or his or her designee;

(C) the Secretary of Housing and Urban Development or his or her designee;

(D) the Secretary of the Interior or his or her designee;

(E) the Secretary of the Treasury or his or her designee;

(F) the Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including—

(i) 2 individuals who are officers of existing community development financial institutions;

(ii) 2 individuals who are officers of insured depository institutions;

(iii) 2 individuals who are officers of national consumer or public interest organizations;

(iv) 2 individuals who have expertise in community development; and

(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

**(3) Chairperson**

The members of the Board specified in paragraph (2)(G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

**(4) Board function**

It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

**(5) Terms of private members**

**(A) In general**

Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

**(B) Vacancies**

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed.

**(6) Meetings**

The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

**(7) Reimbursement for expenses**

The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

**(8) Costs and expenses**

The Fund shall provide to the Board all necessary staff and facilities.

**(e) Omitted**

**(f) Government Corporation Control Act exemption**

Section 9107(b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

**(g) Limitation of Fund and Federal liability**

The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.

**(h) Prohibition on issuance of securities**

The Fund may not issue stock, bonds, debentures, notes, or other securities.

**(i) Omitted**

**(j) Assisted institutions not United States instrumentalities**

A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

**(k) Transition period**

**(1) In general**

During the transition period, the Secretary of the Treasury may—

(A) assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and

(B) hire not more than 6 individuals to serve as employees of the Fund during the transition period.

**(2) Continued service**

Individuals hired in accordance with paragraph (1)(B) may continue to serve as employees of the Fund after the transition period.

**(3) Administrative functions**

The administrative functions referred to in paragraph (1)(A) shall be limited to—

(A) establishing accounting, information, and recordkeeping systems for the Fund; and

(B) procuring office space, equipment, and supplies.

**(4) Expedited hiring**

During the transition period, the Secretary of the Treasury may—

(A) appoint and terminate the individuals referred to in paragraph (1)(B) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (1)(B) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

**(5) Certain employees**

During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1)(B).

**(6) Transition expenses**

Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.

**(7) "Transition period" defined**

For purposes of this subsection, the term ''transition period'' means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.

(Pub. L. 103–325, title I, § 104, Sept. 23, 1994, 108 Stat. 2166.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (b)(4)(A) and (k)(4)(A), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (d)(1), (7), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

Federal tax law, referred to in subsec. (g), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Section is comprised of section 104 of Pub. L. 103–325. Subsecs. (e) and (i) of section 104 of Pub. L. 103–325

amended section 9101 of Title 31, Money and Finance, and section 5313 of Title 5, Government Organization and Employees, respectively.

ADMINISTRATION OF FUND BY SECRETARY OF THE TREASURY

Pub. L. 104–134, title I, § 101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–294; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That notwithstanding any other provision of law, for purposes of administering the Community Development Financial Institutions Fund, the Secretary of the Treasury shall have all powers and rights of the Administrator of the CDBFI Act [12 U.S.C. 4701 et seq.] and the Fund shall be within the Department of the Treasury.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 104–19, title I, July 27, 1995, 109 Stat. 237.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4702, 4713, 4742 of this title.

### § 4704. Applications for assistance

#### (a) Form and procedures

An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

#### (b) Minimum requirements

Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application—

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant—

(A) has a record of success in serving investment areas or targeted populations; and

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

#### (c) Preapplication outreach program

The Fund shall provide an outreach program to identify and provide information to potential applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.

(Pub. L. 103–325, title I, § 105, Sept. 23, 1994, 108 Stat. 2170.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1834a, 4705, 4706, 4707, 4712 of this title.

### § 4705. Community partnerships

#### (a) Application

An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

#### (b) Application requirements

The Fund shall require a community partnership application—

(1) to meet the minimum requirements established for community development financial institutions under section 4704(b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704(b) of this title shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

#### (c) Selection criteria

The Fund shall consider a community partnership application based on—

(1) the community development financial institution coapplicant—

(A) meeting the minimum selection criteria described in section 4704 of this title; and

(B) satisfying the selection criteria of section 4706 of this title;

(2) the extent to which the community partner coapplicant will participate in carrying out the partnership;

(3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant's strategic plan; and

(4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

**(d) Limitation on distribution of assistance**

Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

**(e) Other requirements and limitations**

All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

(Pub. L. 103–325, title I, § 106, Sept. 23, 1994, 108 Stat. 2171.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4704 of this title.

## § 4706. Selection of institutions

**(a) Selection criteria**

Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on—

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;

(7) the extent to which the matching funds are derived from private sources;

(8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;

(9) whether the applicant is, or will become, an insured community development financial institution;

(10) the extent of support from the investment areas or targeted populations;

(11) the extent to which the applicant is, or will be, community-owned or community-governed;

(12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;

(13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(14) other factors deemed to be appropriate by the Fund.

**(b) Geographic diversity**

In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas.

(Pub. L. 103–325, title I, § 107, Sept. 23, 1994, 108 Stat. 2172.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4705, 4707, 4712 of this title.

## § 4707. Assistance provided by Fund

**(a) Forms of assistance**

**(1) In general**

The Fund may provide—

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance—

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

**(2) Equity investments**

**(A) Limitation on equity investments**

The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

**(B) Fund deemed not to control**

Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Noth-

ing in this subparagraph shall affect the application of any Federal tax law.

**(3) Deposits**

Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

**(4) Limitations on obligations**

Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a(5) of title 2, are made in advance.

**(b) Uses of financial assistance**

**(1) In general**

Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products—

(i) that serve low-income people; and

(ii) that—

(I) are not provided by other lenders in the area; or

(II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and

(F) other businesses and activities deemed appropriate by the Fund.

**(2) Limitations**

No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31).

**(c) Uses of technical assistance**

**(1) Types of activities**

Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

**(2) Availability of technical assistance**

The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

**(d) Amount of assistance**

**(1) In general**

Except as provided in paragraph (2), the Fund may provide not more than $5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

**(2) Exception**

The Fund may provide not more than $3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community development financial institution that proposes to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if—

(A) the subsidiary or affiliate—

(i) would be a community development financial institution; and

(ii) independently—

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time preceding the date of receipt of the application at issue.

**(3) Timing of assistance**

Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

**(e) Matching requirements**

**(1) In general**

Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

**(2) Exception**

In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant—

(i) has total assets of less than $100,000;

(ii) serves nonmetropolitan or rural areas; and

(iii) is not requesting more than $25,000 in assistance.

**(3) Limitation**

Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

**(4) Construction of "Federal Government funds"**

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

**(f) Terms and conditions**

**(1) Soundness of unregulated institutions**

The Fund shall—

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 4714(e)(1) of this title; and

(C) require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

**(2) Assistance agreement**

**(A) In general**

Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

**(B) Performance goals**

Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704(b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

**(C) Sanctions**

The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

(i) require changes to the performance goals imposed pursuant to subparagraph (B);

(ii) require changes to the strategic plan submitted pursuant to section 4704(b)(2) of this title;

(iii) revoke approval of the application;

(iv) reduce or terminate assistance;

(v) require repayment of assistance;

(vi) bar an applicant from reapplying for assistance from the Fund; and

(vii) take such other actions as the Fund deems appropriate.

**(D) Consultation with tribal governments**

In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe, the Fund shall consult with, and seek input from, any appropriate tribal government.

**(g) Authority to sell equity investments and loans**

The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

**(h) No authority to limit supervision and regulation**

Nothing in this subchapter shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.

(Pub. L. 103–325, title I, § 108, Sept. 23, 1994, 108 Stat. 2172.)

REFERENCES IN TEXT

Federal tax law, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

The Housing and Community Development Act of 1974, referred to in subsec. (e)(4), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1834a, 4703, 4711, 4715, 4718 of this title.

## § 4708. Training

**(a) In general**

The Fund may operate a training program to increase the capacity and expertise of community development financial institutions and other members of the financial services industry to undertake community development finance activities.

**(b) Program activities**

The training program shall provide educational programs to assist community development financial institutions and other members

of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and providing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

**(c) Participation**

The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

**(d) Contracting**

The Fund may offer the training program described in this section directly or through a contract with other organizations. The Fund may contract to provide the training program through organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

**(e) Coordination**

The Fund shall coordinate with other appropriate Federal departments or agencies that operate similar training programs in order to prevent duplicative efforts.

**(f) Regulatory fee for providing training services**

**(1) General rule**

The Fund may, at the discretion of the Administrator and in accordance with this subsection, assess and collect regulatory fees solely to cover the costs of the Fund in providing training services under a training program operated in accordance with this section.

**(2) Persons subject to fee**

Fees may be assessed under paragraph (1) only on persons who participate in the training program.

**(3) Limitation on manner of collection**

Fees may be assessed and collected under this subsection only in such manner as may reasonably be expected to result in the collection of an aggregate amount of fees during any fiscal year which does not exceed the aggregate costs of the Fund for such year in providing training services under a training program operated in accordance with this section[1]

**(4) Limitation on amount of fee**

The amount of any fee assessed under this subsection on any person may not exceed the amount which is reasonably based on the proportion of the training services provided under a training program operated in accordance with this section which relate to such person.

(Pub. L. 103–325, title I, § 109, Sept. 23, 1994, 108 Stat. 2176.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4702, 4711, 4718 of this title.

[1] So in original. Probably should be followed by a period.

**§ 4709. Encouragement of private entities**

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subchapter. Any such entity shall be managed exclusively by persons not employed by the Federal Government or any agency or instrumentality thereof, or by any State or local government or any agency or instrumentality thereof.

(Pub. L. 103–325, title I, § 110, Sept. 23, 1994, 108 Stat. 2177.)

**§ 4710. Collection and compilation of information**

The Fund shall—

(1) collect and compile information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving such institutions; and

(2) make such information available to promote the purposes of this subchapter.

(Pub. L. 103–325, title I, § 111, Sept. 23, 1994, 108 Stat. 2177.)

**§ 4711. Investment of receipts and proceeds**

**(a) Establishment of account**

Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 4707 or 4712 of this title, and any fees received pursuant to section 4708(f) of this title shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as ''the account'') established to carry out the purpose of this subchapter.

**(b) Investments**

Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

**(c) Availability**

Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.

(Pub. L. 103–325, title I, § 112, Sept. 23, 1994, 108 Stat. 2177.)

**§ 4712. Capitalization assistance to enhance liquidity**

**(a) Assistance**

**(1) In general**

The Fund may provide assistance for the purpose of providing capital to organizations

to purchase loans or otherwise enhance the liquidity of community development financial institutions, if—

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds—

(i) from sources other than the Federal Government;

(ii) on the basis of not less than one dollar for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

**(2) Limitation on other assistance**

An organization that receives assistance under this section may not receive other financial or technical assistance under this subchapter.

**(3) Construction of Federal Government funds**

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

**(b) Selection**

The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 4704(b) and 4706 of this title, as appropriate.

**(c) Amount of assistance**

The Fund may provide a total of not more than $5,000,000 of assistance to an organization or its subsidiaries or affiliates under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

**(d) Audit and report requirements**

Organizations that receive assistance from the Fund in accordance with this section shall—

(1) submit to the Fund, not less than once in every 18-month period, financial statements audited by an independent certified public accountant, as part of the report required by paragraph (2);

(2) submit an annual report on its activities; and

(3) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

**(e) Limitations on liability**

**(1) Liability of Fund**

The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, or territory. Nothing in this paragraph shall affect the application of Federal tax law.

**(2) Liability of Government**

This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

**(f) Use of proceeds**

Any proceeds from the sale of loans by an organization assisted under this section shall be used by the seller for community development purposes.

(Pub. L. 103–325, title I, § 113, Sept. 23, 1994, 108 Stat. 2178.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

Federal tax law, referred to in subsec. (e)(1), is classified generally to Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4704, 4706, 4707, 4711, 4718 of this title.

## § 4713. Incentives for depository institution participation

**(a) Function of Administrator**

**(1) In general**

Of any funds appropriated pursuant to the authorization in section 4718(a) of this title, the funds made available for use in carrying out this section in accordance with section 4718(a)(4) of this title shall be administered by the Administrator of the Fund, in consultation with—

(A) the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and the National Credit Union Administration;

(B) the individuals named pursuant to clauses (ii) and (iv) of section 4703(d)(2)(G) of this title; and

(C) any other representatives of insured depository institutions or other persons as the Administrator may determine to be appropriate.

**(2) Applicability of Bank Enterprise Act of 1991**

Subject to subsection (b) of this section and the consultation requirement of paragraph (1)—

(A) section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] shall be applicable to the Administrator, for purposes of this section, in the same manner and to the same extent that such section is applicable to the Community Enterprise Assessment Credit Board;

(B) the Administrator shall, for purposes of carrying out this section and section 233

of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a]—

(i) have all powers and rights of the Community Enterprise Assessment Credit Board under section 233 of the Bank Enterprise Act of 1991 to administer and enforce any provision of such section 233 which is applicable to the Administrator under this section; and

(ii) shall be subject to the same duties and restrictions imposed on the Community Enterprise Assessment Credit Board; and

(C) the Administrator shall—

(i) have all powers and rights of an appropriate Federal banking agency under section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] to approve or disapprove the designation of qualified distressed communities for purposes of this section and provide information and assistance with respect to any such designation; and

(ii) shall be subject to the same duties imposed on the appropriate Federal banking agencies under such section 233(b)(2).

**(3) Awards**

The Administrator shall determine the amount of assessment credits, and shall make awards of those credits.

**(4) Regulations and guidelines**

The Administrator may prescribe such regulations and issue such guidelines as the Administrator determines to be appropriate to carry out this section.

**(5) Exceptions to applicability**

Notwithstanding paragraphs (1) through (4) of this subsection, subsections (a)(1) and (e)(2) of section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1), (e)(2)], and any other provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] relating to the Bank Enterprise Act of 1991, do not apply to the Administrator for purposes of this subchapter.

**(b) Provisions relating to administration of this section**

**(1) New lifeline accounts**

In applying section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] for purposes of this section, the Administrator shall treat the provision of new lifeline accounts by an insured depository institution as an activity which is qualified to be taken into account under section 233(a)(2)(A) of such Act.

**(2) Determination of assessment credit**

For the purpose of this subchapter, section 233(a)(3) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834a(a)(3)) shall be applied by substituting the following text:

**"(3) Amount of assessment credit**

''The amount of an assessment credit which may be awarded to an insured depository institution to carry out the qualified activities of the institution or of the subsidiaries of the institution pursuant to this section for any semiannual period shall be equal to the sum of—

''(A) with respect to qualifying activities described in paragraph (2)(A), the amount which is equal to—

''(i) 5 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is not a community development financial institution; or

''(ii) 15 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is a community development financial institution; and

''(B) with respect to qualifying activities described in paragraph (2)(C), 15 percent of the amounts determined under such subparagraph.''

**(3) Adjustment of percentage**

Section 233(a)(5) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(5)] shall be applied for purposes of this section by—

(A) substituting ''institutions which are community development financial institutions'' for ''institutions which meet the community development organization requirements under section 234 [12 U.S.C. 1834b]''; and

(B) substituting ''institutions which are not community development financial institutions'' for ''institutions which do not meet such requirements''.

**(4) Designation of QDC**

Section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] shall be applied for purposes of this section without regard to subparagraph (A)(ii) of such section 233(b)(2).

**(5) Operation on annual basis**

The Administrator may, in the Administrator's discretion, apply section 233 of the Bank Enterprise Act of 1991 for purposes of this section by providing community enterprise assessment credits with respect to annual periods rather than semiannual periods.

**(6) Outreach**

The Administrator shall ensure that information about the Bank Enterprise Act of 1991 under this section is widely disseminated to all interested parties.

**(7) Qualified activities**

For the purpose of this subchapter, section 233(a)(2)(A) of the Bank Enterprise Act of 1991 shall be applied by inserting ''of the increase'' after ''the amount''.

(Pub. L. 103–325, title I, § 114, Sept. 23, 1994, 108 Stat. 2179.)

REFERENCES IN TEXT

The Bank Enterprise Act of 1991, referred to in subsecs. (a)(2), (5) and (b)(6), is subtitle C (§§ 231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308–2315, which enacted sections 1834 to 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a)(5), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat.

873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 114 of Pub. L. 103–325. Subsec. (c) of section 114 of Pub. L. 103–325 amended section 1834a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4718 of this title.

## § 4714. Recordkeeping

### (a) In general

A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

### (b) User profile information

The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, ethnicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

### (c) Access to records

The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

### (d) Review

Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

### (e) Reporting

#### (1) Annual reports

The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

#### (2) Availability of reports

The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.

(Pub. L. 103–325, title I, § 115, Sept. 23, 1994, 108 Stat. 2184.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4707 of this title.

## § 4715. Special provisions with respect to institutions that are supervised by Federal banking agencies

### (a) Consultation with appropriate agencies

The Fund shall consult with and consider the views of the appropriate Federal banking agency prior to providing assistance under this subchapter to—

(1) an insured community development financial institution;

(2) any community development financial institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency; or

(3) any community development financial institution that has as its community partner an institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

### (b) Requests for information, reports, or records

#### (1) In general

Except as provided in paragraph (4), notwithstanding any other provisions of this subchapter, prior to directly requesting information from or imposing reporting or recordkeeping requirements on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, the Fund shall consult with the appropriate Federal banking agency to determine if the information requested is available from or may be obtained by such agency in the form, format, or detail required by the Fund.

#### (2) Timing of response from appropriate Federal banking agency

If the information, reports, or records requested by the Fund pursuant to paragraph (1) are not provided by the appropriate Federal banking agency in less than 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the recordkeeping or reporting requirements directly on such institutions with notice to the appropriate Federal banking agency.

#### (3) Elimination of duplicative information and reporting requirements

The Fund shall use any information provided the appropriate Federal banking agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and recordkeeping by an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

#### (4) Exception

Notwithstanding paragraphs (1) and (2), the Fund may require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency to provide information with respect to the institution's implementation of its strategic plan or compliance with

the terms of its assistance agreement under this subchapter, after providing notice to the appropriate Federal banking agency.

**(c) Exclusion for examination reports**

Nothing in this section shall be construed to permit the Fund to require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, to obtain, maintain, or furnish an examination report of any appropriate Federal banking agency or records contained in or related to such a report.

**(d) Sharing of information**

The Fund and the appropriate Federal banking agency shall promptly notify each other of material concerns about an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, and share appropriate information relating to such concerns.

**(e) Disclosure prohibited**

Neither the Fund nor the appropriate Federal banking agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

**(f) Privilege maintained**

The Fund, the appropriate Federal banking agency, and any other party providing information under this section shall not be deemed to have waived any privilege applicable to any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

**(g) Exceptions**

Nothing in this section shall authorize the Fund or the appropriate Federal banking agency to withhold information from the Congress or prevent it from complying with a request for information from a Federal department or agency in compliance with applicable law.

**(h) Sanctions**

**(1) Notification**

The Fund shall notify the appropriate Federal banking agency before imposing any sanction pursuant to the authority in section 4707(f)(2)(C) of this title on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of that agency.

**(2) Exceptions**

The Fund shall not impose a sanction referred to in paragraph (1) if the appropriate Federal banking agency, in writing, not later than 30 calendar days after receiving notice from the Fund—

(A) objects to the proposed sanction;

(B) determines that the sanction would—

(i) have a material adverse effect on the safety and soundness of the institution; or

(ii) impede or interfere with an enforcement action against that institution by that agency;

(C) proposes a comparable alternative action; and

(D) specifically explains—

(i) the basis for the determination under subparagraph (B) and, if appropriate, provides documentation to support the determination; and

(ii) how the alternative action suggested pursuant to subparagraph (C) would be as effective as the sanction proposed by the Fund in securing compliance with this subchapter and deterring future noncompliance.

**(i) Safety and soundness considerations**

The Fund and each appropriate Federal banking agency shall cooperate and respond to requests from each other and from other appropriate Federal banking agencies in a manner that ensures the safety and soundness of the insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(Pub. L. 103–325, title I, § 116, Sept. 23, 1994, 108 Stat. 2185.)

## § 4716. Studies and reports; examination and audit

**(a) Annual report by Fund**

The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions and other organizations assisted pursuant to this subchapter, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (f) of this section.

**(b) Optional studies**

The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subchapter and to facilitate investment in distressed communities. The findings of any studies conducted pursuant to this subsection shall be included in the report required by subsection (a) of this section.

**(c) Native American lending study**

**(1) In general**

The Fund shall conduct a study on lending and investment practices on Indian reservations and other land held in trust by the United States. Such study shall—

(A) identify barriers to private financing on such lands; and

(B) identify the impact of such barriers on access to capital and credit for Native American populations.

**(2) Report**

Not later than 12 months after the date on which the Administrator is appointed, the Fund shall submit a report to the President and the Congress that—

(A) contains the findings of the study conducted under paragraph (1);

(B) recommends any necessary statutory and regulatory changes to existing Federal programs; and

(C) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

**(d) Investment, governance, and role of Fund**

Thirty months after the appointment and qualification of the Administrator, the Comptroller General of the United States shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

**(e) Consultation**

In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

**(f) Examination and audit**

The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, except that audits required by section 9105(a) of such title shall be performed annually.

(Pub. L. 103–325, title I, § 117, Sept. 23, 1994, 108 Stat. 2187.)

**§ 4717. Enforcement**

**(a) Regulations**

**(1) In general**

Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall promulgate such regulations as may be necessary to carry out this subchapter.

**(2) Regulations required**

The regulations promulgated under paragraph (1) shall include regulations applicable to community development financial institutions that are not insured depository institutions to—

(A) prevent conflicts of interest on the part of directors, officers, and employees of community development financial institutions as the Fund determines to be appropriate; and

(B) establish such standards with respect to loans by a community development financial institution to any director, officer, or employee of such institution as the Fund determines to be appropriate, including loan amount limitations.

**(b) Administrative enforcement**

The provisions of this subchapter, and regulations prescribed and agreements entered into under this subchapter, shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency, in the case of an insured community development financial institution. A violation of this subchapter, or any regulation prescribed under or any agreement entered into under this subchapter, shall be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Pub. L. 103–325, title I, § 119, Sept. 23, 1994, 108 Stat. 2188.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (b), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 119 of Pub. L. 103–325. Subsec. (c) of section 119 of Pub. L. 103–325 amended section 657 of Title 18, Crimes and Criminal Procedure.

**§ 4718. Authorization of appropriations**

**(a) Fund authorization**

**(1) In general**

To carry out this subchapter, there are authorized to be appropriated to the Fund, to remain available until expended—

(A) $60,000,000 for fiscal year 1995;

(B) $104,000,000 for fiscal year 1996;

(C) $107,000,000 for fiscal year 1997; and

(D) $111,000,000 for fiscal year 1998;

or such greater sums as may be necessary to carry out this subchapter.

**(2) Administrative expenses**

**(A) In general**

Of amounts authorized to be appropriated to the Fund pursuant to this section, not more than $5,550,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund. Costs associated with the training program established under section 4708 of this title and the technical assistance program established under section 4707 of this title shall not be considered to be administrative expenses for purposes of this paragraph.

**(B) Calculations**

The amounts referred to in paragraphs (3) and (4) shall be calculated after subtracting the amount referred to in subparagraph (A) of this paragraph from the total amount appropriated to the Fund in accordance with paragraph (1) in any fiscal year.

**(3) Capitalization assistance**

Not more than 5 percent of the amounts authorized to be appropriated under paragraph (1) may be used as provided in section 4712 of this title.

**(4) Availability for funding section 4713 of this title**

33⅓ percent of the amounts appropriated to the Fund for any fiscal year pursuant to the authorization in paragraph (1) shall be available for use in carrying out section 4713 of this title.

**(5) Support of community development financial institutions**

The Administrator shall allocate funds authorized under this section, to the maximum extent practicable, for the support of community development financial institutions.

**(b) Community Development Credit Union Revolving Loan Fund**

There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund—

(1) $4,000,000 for fiscal year 1995;
(2) $2,000,000 for fiscal year 1996;
(3) $2,000,000 for fiscal year 1997; and
(4) $2,000,000 for fiscal year 1998.

**(c) Budgetary treatment**

Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 665[1] of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title I, § 121, Sept. 23, 1994, 108 Stat. 2189.)

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (c), was repealed by Pub. L. 105–33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4713 of this title.

## SUBCHAPTER II—SMALL BUSINESS CAPITAL ENHANCEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4703 of this title.

### § 4741. Findings and purposes

**(a) Findings**

The Congress finds that—

(1) small business concerns are a vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;
(2) adequate access to debt capital is a critical component for small business development, productivity, expansion, and success in the United States;
(3) commercial banks are the most important suppliers of debt capital to small business concerns in the United States;
(4) commercial banks and other depository institutions have various incentives to minimize their risk in financing small business concerns;
(5) as a result of such incentives, many small business concerns with economically sound financing needs are unable to obtain access to needed debt capital;
(6) the small business capital access programs implemented by certain States are a flexible and efficient tool to assist financial institutions in providing access to needed debt capital for many small business concerns in a manner consistent with safety and soundness regulations;
(7) a small business capital access program would complement other programs which assist small business concerns in obtaining access to capital; and
(8) Federal policy can stimulate and accelerate efforts by States to implement small business capital access programs by providing an incentive to States, while leaving the administration of such programs to each participating State.

**(b) Purposes**

By encouraging States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to provide access to debt capital for a broad portfolio of small business concerns, and thereby promote a more efficient and effective debt market, the purposes of this subchapter are—

(1) to promote economic opportunity and growth;
(2) to create jobs;
(3) to promote economic efficiency;
(4) to enhance productivity; and
(5) to spur innovation.

(Pub. L. 103–325, title II, § 251, Sept. 23, 1994, 108 Stat. 2203.)

EFFECTIVE DATE

Section 261 of title II of Pub. L. 103–325 provided that: ''This subtitle [subtitle B (§§ 251–261) of title II of Pub. L. 103–325, enacting this subchapter] shall become effective on January 6, 1996.''

### § 4742. Definitions

For purposes of this subchapter—

(1) the term ''Fund'' means the Community Development Financial Institutions Fund established under section 4703 of this title;
(2) the term ''appropriate Federal banking agency''—
  (A) has the same meaning as in section 1813 of this title; and
  (B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act [12 U.S.C. 1751 et seq.];
(3) the term ''early loan'' means a loan enrolled at a time when the aggregate covered amount of loans previously enrolled under the Program by a particular participating financial institution is less than $5,000,000;
(4) the term ''enrolled loan'' means a loan made by a participating financial institution that is enrolled by a participating State in accordance with this subchapter;
(5) the term ''financial institution'' means any federally chartered or State-chartered commercial bank, savings association, savings bank, or credit union;
(6) the term ''participating financial institution'' means any financial institution that has entered into a participation agreement with a participating State in accordance with section 4744 of this title;
(7) the term ''participating State'' means any State that has been approved for partici-

[1] See References in Text note below.

pation in the Program in accordance with section 4743 of this title;

(8) the term ''passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate (other than the business of passive ownership of real estate); or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term ''Program'' means the Small Business Capital Enhancement Program established under this subchapter;

(10) the term ''reserve fund'' means a fund, established by a participating State, earmarked for a particular participating financial institution, for the purposes of—

(A) depositing all required premium charges paid by the participating financial institution and by each borrower receiving a loan under the Program from a participating financial institution;

(B) depositing contributions made by the participating State; and

(C) covering losses on enrolled loans by disbursing accumulated funds; and

(11) the term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia;

(C) any political subdivision of a State of the United States, which subdivision has a population in excess of the population of the least populated State of the United States; and

(D) any other political subdivision of a State of the United States that the Fund determines has the capacity to participate in the program.[1]

(Pub. L. 103–325, title II, § 252, Sept. 23, 1994, 108 Stat. 2204.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

### § 4743. Approving States for participation

#### (a) Application

Any State may apply to the Fund for approval to be a participating State under the Program and to be eligible for reimbursement by the Fund pursuant to section 4747 of this title.

#### (b) Approval criteria

The Fund shall approve a State to be a participating State, if—

(1) a specific department or agency of the State has been designated to implement the Program;

(2) all legal actions necessary to enable such designated department or agency to implement the Program have been accomplished;

(3) funds in the amount of at least $1 for every 2 people residing in the State (as of the last decennial census for which data have been released) are available and have been legally committed to contributions by the State to reserve funds, with such funds being available without time limit and without requiring additional legal action, except that such requirements shall not be construed to limit the authority of the State to take action at a later time that results in the termination of its obligation to enroll loans and make contributions to reserve funds;

(4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subchapter; and

(5) the State and the Fund have executed a reimbursement agreement that conforms to the requirements of this subchapter.

#### (c) Existing State programs

##### (1) In general

A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Fund to be approved to be a participating State. The Fund shall approve such State to be a participating State, and to be eligible for reimbursements by the Fund pursuant to section 4747 of this title, if the State—

(A) satisfies the requirements of subsections (a) and (b) of this section; and

(B) certifies that each affected financial institution has satisfied the requirements of section 4744 of this title.

##### (2) Applicable terms of participation

###### (A) Status of institutions

If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 4747[1] of this title in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Fund approves the State for participation.

###### (B) Effective date of participation

If an amended participation agreement that conforms with section 4745 of this title is required in order to secure participation approval by the Fund, contributions subject to reimbursement under section 4747 of this title shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

[1] So in original. Probably should be capitalized.

[1] See References in Text note below.

**(C) Use of accumulated reserve funds**

A State that is approved for participation in accordance with this subsection may continue to implement the program[2] utilizing the reserve funds accumulated under the State program.

**(d) Prior appropriations requirement**

The Fund shall not approve a State for participation in the Program until at least $50,000,000 has been appropriated to the Fund (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 4747 of this title and otherwise carrying out this subchapter.

**(e) Amendments to agreements**

If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Fund in accordance with subsection (b)(4) of this section. Any such amendment shall become effective only after it has been approved by the Fund.

(Pub. L. 103–325, title II, § 253, Sept. 23, 1994, 108 Stat. 2205.)

REFERENCES IN TEXT

Section 4747 of this title, referred to in subsec. (c)(2)(A), was in the original ''section 237'' and was translated as reading ''section 257'' meaning section 257 of Pub. L. 103–325, to reflect the probable intent of Congress. Pub. L. 103–325 does not contain a section 237.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4742, 4746, 4748 of this title.

## § 4744. Participation agreements

**(a) In general**

A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Fund.

**(b) Participating financial institutions**

Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

(Pub. L. 103–325, title II, § 254, Sept. 23, 1994, 108 Stat. 2207.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4742, 4743 of this title.

## § 4745. Terms of participation agreements

**(a) In general**

The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

**(b) Establishment of separate reserve funds**

A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r) of this section.

**(c) Investment authority**

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the participating financial institution in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

**(d) Earned income and interest**

Interest or income earned on the funds credited to a reserve fund shall be deemed to be part of the reserve fund, except that a participating State may, as further specified in the participation agreement, provide authority for the participating State to withdraw some or all of such interest or income earned.

**(e) Loan terms and conditions**

**(1) In general**

A loan to be filed for enrollment under the Program may be made with such interest rate, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower, consistent with applicable law.

**(2) Lines of credit**

If a loan to be filed for enrollment is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the borrower against the line of credit.

**(f) Enrollment process**

**(1) Filing**

**(A) In general**

A participating financial institution shall file each loan made under the Program for enrollment by completing and submitting to the participating State a form prescribed by the participating State.

**(B) Form**

The form referred to in subparagraph (A) shall include a representation by the participating financial institution that it has complied with the participation agreement in enrolling the loan with the State.

[2] So in original. Probably should be capitalized.

**(C) Premium charges**

Accompanying the completed form shall be the nonrefundable premium charges paid by the borrower and the participating financial institution, or evidence that such premium charges have been deposited into the deposit account containing the reserve fund, if applicable.

**(D) Submission**

The participation agreement shall require that the items required by this subsection shall be submitted to the participating State by the participating financial institutions not later than 10 calendar days after a loan is made.

**(2) Enrollment by State**

Upon receipt by the participating State of the filing submitted in accordance with paragraph (1), the participating State shall promptly enroll the loan and make a matching contribution to the reserve fund in accordance with subsection (j) of this section, unless the information submitted indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

**(g) Coverage amount**

In filing a loan for enrollment under the Program, the participating financial institution may specify an amount to be covered under the Program that is less than the full amount of the loan.

**(h) Premium charges**

**(1) Minimum and maximum amounts**

The premium charges payable to the reserve fund by the borrower and the participating financial institution shall be prescribed by the participating financial institution, within minimum and maximum limits set forth in the participation agreement. The participation agreement shall establish minimum and maximum limits whereby the sum of the premium charges paid in connection with a loan by the borrower and the participating financial institution is not less than 3 percent nor more than 7 percent of the amount of the loan covered under the Program.

**(2) Allocation of premium charges**

The participation agreement shall specify terms for allocating premium charges between the borrower and the participating financial institution. However, if the participating financial institution is required to pay any of the premium charges, the participation agreement shall authorize the participating financial institution to recover from the borrower the cost of the payment of the participating financial institution, in any manner on which the participating financial institution and the borrower agree.

**(i) Restrictions**

**(1) Actions prohibited**

Except as provided in subsection (h) of this section and paragraph (2) of this subsection, the participating State may not—

(A) impose any restrictions or requirements, relating to the interest rate, fees, collateral, or other business terms and conditions of the loan; or

(B) condition enrollment of a loan in the Program on the review by the State of the risk or creditworthiness of a loan.

**(2) Effect on other law**

Nothing in this subchapter shall affect the applicability of any other law to the conduct by a participating financial institution of its business.

**(j) State contributions**

In enrolling a loan under the Program, the participating State shall contribute to the reserve fund an amount, as provided for in the participation agreement, which shall not be less than the sum of the amount of premium charges paid by the borrower and the participating financial institution.

**(k) Submission of claims**

**(1) Filing**

If a participating financial institution charges off all or part of an enrolled loan, such participating financial institution may file a claim for reimbursement with the participating State by submitting a form that—

(A) includes the representation by the participating financial institution that it is filing the claim in accordance with the terms of the applicable participation agreement; and

(B) contains such other information as may be required by the participating State.

**(2) Timing**

Any claim filed under paragraph (1) shall be filed contemporaneously with the action of the participating financial institution to charge off all or part of an enrolled loan. The participating financial institution shall determine when and how much to charge off on an enrolled loan, in a manner consistent with its usual method for making such determinations on business loans that are not enrolled loans under this subchapter.

***(l)* Elements of claims**

A claim filed by a participating financial institution may include the amount of principal charged off, not to exceed the covered amount of the loan. Such claim may also include accrued interest and out-of-pocket expenses, if and to the extent provided for under the participation agreement.

**(m) Payment of claims**

**(1) In general**

Except as provided in subsection (n) of this section and paragraph (2) of this subsection, upon receipt of a claim filed in accordance with this section and the participation agreement, the participating State shall promptly pay to the participating financial institution, from funds in the reserve fund, the full amount of the claim as submitted.

**(2) Insufficient reserve funds**

If there are insufficient funds in the reserve fund to cover the entire amount of a claim of a participating financial institution, the participating State shall pay to the participating

financial institution an amount equal to the current balance in the reserve fund. If the enrolled loan for which the claim has been filed—

(A) is not an early loan, such payment shall be deemed fully to satisfy the claim, and the participating financial institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) is an early loan, such payment shall not be deemed fully to satisfy the claim of the participating financial institution, and at such time as the remaining balance of the claim does not exceed 75 percent of the balance in the reserve fund, the participating State shall, upon the request of the participating financial institution, pay any remaining amount of the claim.

**(n) Denial of claims**

A participating State may deny a claim if a representation or warranty made by the participating financial institution to the participating State at the time that the loan was filed for enrollment or at the time that the claim was submitted was known by the participating financial institution to be false.

**(*o*) Subsequent recovery of claim amount**

If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the participating financial institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any expenses incurred by the institution in collection of such amount.

**(p) Participation agreement terms**

**(1) In general**

In connection with the filing of a loan for enrollment in the Program, the participation agreement—

(A) shall require the participating financial institution to obtain an assurance from each borrower that—

(i) the proceeds of the loan will be used for a business purpose;

(ii) the loan will not be used to finance passive real estate ownership; and

(iii) the borrower is not—

(I) an executive officer, director, or principal shareholder of the participating financial institution;

(II) a member of the immediate family of an executive officer, director, or principal shareholder of the participating financial institution; or

(III) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(B) shall require the participating financial institution to provide assurances to the participating State that the loan has not been made in order to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the borrower to the participating financial institution or to an affiliate of the participating financial institution;

(C) may provide that if—

(i) a participating financial institution makes a loan to a borrower that is a refinancing of a loan previously made to the borrower by the participating financial institution or an affiliate of the participating financial institution;

(ii) such prior loan was not enrolled in the Program; and

(iii) additional or new financing is extended by the participating financial institution as part of the refinancing,

the participating financial institution may file the loan for enrollment, with the amount to be covered under the Program not to exceed the amount of any additional or new financing; and

(D) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this subchapter.

**(2) Definitions**

For purposes of this subsection, the terms ''executive officer'', ''director'', ''principal shareholder'', ''immediate family'', and ''related interest'' refer to the same relationship to a participating financial institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

**(q) Termination clause**

In each participation agreement, the participating State shall reserve for itself the ability to terminate its obligation to enroll loans under the Program. Any such termination shall be prospective only, and shall not apply to amounts of loans enrolled under the Program prior to such termination.

**(r) Allowable withdrawals from fund**

The participation agreement may provide that, if, for any consecutive period of not less than 24 months, the aggregate outstanding balance of all enrolled loans for a participating financial institution is continually less than the outstanding balance in the reserve fund for that participating financial institution, the participating State, in its discretion, may withdraw an amount from the reserve fund to bring the balance in the reserve fund down to the outstanding balance of all such enrolled loans.

**(s) Grandfathered provision**

**(1) Special treatment of premium charges**

Notwithstanding subsection (b) or (d) of this section, the participation agreement, if explicitly authorized by a statute enacted by the State before September 23, 1994, may allow a participating financial institution to treat the premium charges paid by the participating financial institution and the borrower into the reserve fund, and interest or income earned on funds in the reserve fund that are deemed to be attributable to such premium charges, as assets of the participating financial institution for accounting purposes, subject to withdrawal by the participating financial institution only—

(A) for the payment of claims approved by the participating State in accordance with this section; and

(B) upon the participating financial institution's withdrawal from authority to make new loans under the Program.

**(2) Payment of post-withdrawal claims**

After any withdrawal of assets from the reserve fund pursuant to paragraph (1)(B), any future claims filed by the participating financial institution on loans remaining in its capital access program portfolio shall only be paid from funds remaining in the reserve fund to the extent that, in the aggregate, such claims exceed the sum of the amount of such withdrawn assets, and interest on that amount, imputed at the same rate as income would have accrued had the amount not been withdrawn.

**(3) Conditions for terminating special authority**

If the Fund determines that the inclusion in a participation agreement of the provisions authorized by this subsection is resulting in the enrollment of loans under the Program that are likely to have been made without assistance provided under this subchapter, the Fund may notify the participating State that henceforth, the Fund will only make reimbursements to the State under section 4747 of this title with respect to a loan if the participation agreement between the participating State and each participating financial institution has been amended to conform with this section, without exercise of the special authority granted by this subsection.

(Pub. L. 103–325, title II, § 255, Sept. 23, 1994, 108 Stat. 2207.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4743, 4748 of this title.

## § 4746. Reports

**(a) Reserve funds report**

On or before the last day of each calendar quarter, a participating State shall submit to the Fund a report of contributions to reserve funds made by the participating State during the previous calendar quarter. If the participating State has made contributions to one or more reserve funds during the previous quarter, the report shall—

(1) indicate the total amount of such contributions;

(2) indicate the amount of contributions which is subject to reimbursement, which shall be equal to the total amount of contributions, unless one of the limitations contained in section 4747 of this title is applicable;

(3) if one of the limitations in section 4747 of this title is applicable, provide documentation of the applicability of such limitation for each loan for which the limitation applies; and

(4) include a certification by the participating State that—

(A) the information provided in accordance with paragraphs (1), (2), and (3) is accurate;

(B) funds in an amount meeting the minimum requirements of section 4743(b)(3) of this title continue to be available and legally committed to contributions by the State to reserve funds, less any amount that has been contributed by the State to reserve funds subsequent to the State being approved for participation in the Program;

(C) there has been no unapproved amendment to any participation agreement or the form of participation agreements; and

(D) the participating State is otherwise implementing the Program in accordance with this subchapter and regulations issued pursuant to section 4749 of this title.

**(b) Annual data**

Not later than March 31 of each year, each participating State shall submit to the Fund annual data indicating the number of borrowers financed under the Program, the total amount of covered loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

**(c) Form**

The reports and data filed pursuant to subsections (a) and (b) of this section shall be in such form as the Fund may require.

(Pub. L. 103–325, title II, § 256, Sept. 23, 1994, 108 Stat. 2212.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4747 of this title.

## § 4747. Reimbursement by Fund

**(a) Reimbursements**

Not later than 30 calendar days after receiving a report filed in compliance with section 4746 of this title, the Fund shall reimburse the participating State in an amount equal to 50 percent of the amount of contributions by the participating State to the reserve funds that are subject to reimbursement by the Fund pursuant to section 4746 of this title and this section. The Fund shall reimburse participating States, as it receives reports pursuant to section 4746(a) of this title, until available funds are expended.

**(b) Size of assisted borrower**

The Fund shall not provide any reimbursement to a participating State with respect to an enrolled loan made to a borrower that has 500 or more employees at the time that the loan is enrolled in the Program.

**(c) Three-year maximum**

The amount of reimbursement to be provided by the Fund to a participating State over any 3-year period in connection with loans made to any single borrower or any group of borrowers among which a common enterprise exists shall not exceed $75,000. For purposes of this subsection, ''common enterprise'' shall have the same meaning as in part 32 of title 12 of the Code of Federal Regulations, or any successor to that part.

**(d) Loans totaling less than $2,000,000**

In connection with a loan in which the covered amount of the loan plus the covered amount of all previous loans enrolled by a participating financial institution does not exceed $2,000,000, the amount of reimbursement by the Fund to

the participating State shall not exceed the lesser of—

(1) 75 percent of the sum of the premium charges paid to the reserve fund by the borrower and the participating financial institution; or

(2) 5.25 percent of the covered amount of the loan.

**(e) Loans totaling more than $2,000,000**

In connection with a loan in which the sum of the covered amounts of all previous loans enrolled by the participating financial institution in the Program equals or exceeds $2,000,000, the amount of reimbursement to be provided by the Fund to the participating State shall not exceed the lesser of—

(1) 50 percent of the sum of the premium charges paid by the borrower and the participating financial institution; or

(2) 3.5 percent of the covered amount of the loan.

**(f) Other amounts**

In connection with the enrollment of a loan that will cause the aggregate covered amount of all enrolled loans to exceed $2,000,000, the amount of reimbursement by the Fund to the participating State shall be determined—

(1) by applying subsection (d) of this section to the portion of the loan, which when added to the aggregate covered amount of all previously enrolled loans equals $2,000,000; and

(2) by applying subsection (e) of this section to the balance of the loan.

(Pub. L. 103–325, title II, § 257, Sept. 23, 1994, 108 Stat. 2212.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4743, 4745, 4746, 4748 of this title.

### § 4748. Reimbursement to Fund

**(a) In general**

If a participating State withdraws funds from a reserve fund pursuant to terms of the participation agreement permitted by subsection (d) or (r) of section 4745 of this title, such participating State shall, not later than 15 calendar days after such withdrawal, submit to the Fund an amount computed by multiplying the amount withdrawn by the appropriate factor, as determined under subsection (b) of this section.

**(b) Factor**

The appropriate factor shall be obtained by dividing the total amount of contributions that have been made by the participating State to all reserve funds which were subject to reimbursement—

(1) by 2; and

(2) by the total amount of contributions made by the participating State to all reserve funds, including if applicable, contributions that have been made by the State prior to becoming a participating State if the State continued its own capital access program in accordance with section 4743(b) of this title.

**(c) Use of reimbursements**

The Fund may use funds reimbursed pursuant to this section to make reimbursements under section 4747 of this title.

(Pub. L. 103–325, title II, § 258, Sept. 23, 1994, 108 Stat. 2213.)

### § 4749. Regulations

The Fund shall promulgate appropriate regulations to implement this subchapter.

(Pub. L. 103–325, title II, § 259, Sept. 23, 1994, 108 Stat. 2214.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4746 of this title.

### § 4750. Authorization of appropriations

**(a) Amount**

There are authorized to be appropriated to the Fund $50,000,000 to carry out this subchapter.

**(b) Budgetary treatment**

The amount authorized to be appropriated under subsection (a) of this section shall be subject to discretionary spending caps, as provided in section 665[1] of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title II, § 260, Sept. 23, 1994, 108 Stat. 2214.)

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (b), was repealed by Pub. L. 105–33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

## CHAPTER 48—FINANCIAL INSTITUTIONS REGULATORY IMPROVEMENT

Sec.
4801. Incorporated definitions.
4802. Administrative consideration of burden with new regulations.
(a) Agency considerations.
(b) Adequate transition period for new regulations.
4803. Streamlining of regulatory requirements.
(a) Review of regulations; regulatory uniformity.
(b) Review of disclosures.
4804. Elimination of duplicative filings.
4805. Call report simplification.
(a) Modernization of call report filing and disclosure system.
(b) Uniform reports and simplification of instructions.
(c) Review of call report schedule.
4806. Regulatory appeals process, ombudsman, and alternative dispute resolution.
(a) In general.
(b) Review process.
(c) Comment period.
(d) Agency ombudsman.
(e) Alternative dispute resolution pilot program.
(f) Definitions.
(g) Effect on other authority.
4807. Time limit on agency consideration of completed applications.
(a) In general.
(b) Waiver by applicant authorized.
4808. Revising regulatory requirements for transfers of all types of assets with recourse.
(a) Review and revision of regulations.
(b) Regulations required.
(c) Coordination with section 1835(b) of this title.
(d) Definitions.

[1] See References in Text note below.