SUBCOMMITTEE MARKUP OF LEGISLATION AFFECTING THE SBA CAPITAL ACCESS PROGRAMS

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BEFORE THE

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HOUSE OF REPRESENTATIVES

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SUBCOMMITTEE ON FINANCE AND TAX MARKUP OF LEGISLATION AFFECTING THE SBA CAPITAL ACCESS PROGRAMS

Thursday, October 8, 2009

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

The Subcommittee met, pursuant to call, at 10:03 a.m., in Room 2360, Rayburn House Office Building, Hon. Kurt Schrader [chairman of the Subcommittee] presiding.

Present: Representatives Schrader, Moore, Kirkpatrick, Bean, Halvorson, Buchanan, Luetkemeyer and Coffman.

Chairman SCHRADER. I am pleased to call this morning's markup to order for the Subcommittee on Finance and Tax. Today the Subcommittee will consider legislation reauthorizing SBA's access to capital programs. These resources, which are critical to small firms in all stages of growth, have not been fully modernized in at least 8 years. Needless to say, entrepreneurs' financing needs have since changed dramatically. In this morning's markup we have an opportunity to update these resources to reflect those changes and help small firms grow and enhance their ventures once again.

The SBA offers a diverse catalog of lending and investment programs. When the private sector is unable to meet small business needs, these initiatives bridge the gap. But while SBA's lending options are of enormous value, they are also in need of strengthening and expanding.

The continued success of SBA's lending programs hinge on three primary issues: First, they must evolve to reflect the financing needs of today's businesses; second, SBA must devote more management resources to program maintenance; and, thirdly, the agency should take this opportunity to break the mold and reach out to new and more sophisticated lenders and upgrade their own practices.

The eight bills before us today address these issues head on, and could not have come together without the hard work of their sponsors: Representative Halvorson, Ranking Member Buchanan, Representative Ellsworth, Representative Luetkemeyer, Representative Kirkpatrick, Representative Dahlkemper, Representative Nye, and Representative Griffith.

Modernizing SBA's access to capital programs is one of the most important policy steps we can take in this particular Congress. Doing so will strengthen the small business community, allow en-

trepreneurs to create jobs, and begin to grow our economy once again.

[The information is included in the appendix.]

Chairman SCHRADER. I will now yield to Ranking Member Buchanan for his opening remarks.

Mr. BUCHANAN. I want to thank the Chairman for holding this important markup legislation affecting the SBA capital access programs.

Today, clearly banks are not lending to small businesses. They can't secure the capital or the credit they need. The reality in southwest Florida and all over Florida: If you want to borrow $1 million, you have got to put up a $1 million CD. A lot of real estate has been secured in the past or loans have been secured in the past by real estate, but banks don't even want the real estate today, for obvious reasons. So there is little or no credit, and that is killing jobs in America.

Currently we have 15.1 million Americans that are officially out of work. Now, more than ever, we must rely on small business to creates 70 percent of the jobs not only in Florida, but across the country. Ninety-nine percent of all businesses that are registered in Tallahassee, our capital in Florida, 99 percent of them are small, medium-sized firms, and they create the jobs.

I held a small business conference in our area; had 130 small, medium-sized businesses at that conference. When I started the meeting, I asked everybody in the room, I said, what is your relationship? What has it been? What is it today? Are you having struggles with the banks renewing lines of credit, this, and whatever? And the bottom line was clearly 99 percent of the people in the room had raised their hand that they are concerned about even their business going forward without the lines of credit.

Today we are going to take significant steps, I believe, in alleviating some of the problems facing our Nation's small business. Today I introduce a job creation and economic development concept, or a bill that is the CDC Modernization Act of 2009. It is H.R. 3739. The CDC program was created to provide long-term financing for development and construction of plants, facilities, and other hard assets. My bill will modernize title V of the Small Business Investment Act and significantly increase lending limits by CDCs. This will ensure that small businesses will get the capital they need to expand their business and, ideally, create more jobs.

While I plan on voting for all the bills today, I do have some concerns in particular on the loan limits on the 7(a) program, which I believe will restrict the ability of some small and, ideally, medium-sized business to get the capital they need. But I look forward to working with the Chairman. I plan on being supportive, but I am hoping we can do more in that area.

I yield back, Mr. Chairman.

Chairman SCHRADER. Thank you very much. Good remarks.

[The information is included in the appendix.]

Chairman SCHRADER. Are there other Members who wish to be recognized for the purpose of opening remarks?

Representative Luetkemeyer from Missouri.

Mr. LUETKEMEYER. Good morning, and thank you, Mr. Chairman, for the opportunity to mark up critical legislation aimed at

making the Small Business Administration's capital access programs more effective and responsive to the needs of small businesses.

At a time when small businesses are still struggling to keep their doors open, we must continue to work to improve the usefulness of these initiatives to ensure that our small businesses are able to fully utilize all available resources. Most small business owners remain cautious in their economic outlook, with more than two-thirds saying the recession is not over for them, according to a September 2009 Discover Small Business Watch Index. Many people are eager for a definitive signal that the economy is on the mend, but America's small business owners aren't able to send that message yet. This is at a time when access to credit is being denied at an accelerating pace.

Small businesses have never had a harder time to get a loan. Since the onset of the credit crisis over 2 years ago, available credit to small businesses and consumers has contracted by trillions of dollars, and that occurrence is reflected in dismal consumer spending trends. Without access to credit, small businesses can't grow, can't hire, and too often end up going out of business.

As a small businessman, I am pleased to introduce a bill that will assist many small business owners and employees throughout my district in Missouri and all throughout the country. Small businesses employee 50 percent of the country's workforce and contribute 38 percent of the GDP. Like every recession before, small business will lead the way to an economic recovery.

H.R. 3740, the Small Business Investment Company Modernization Improvement Act of 2009, updates and streamlines the SBA's largest investment program, the Small Business Investment Company Program. The legislation aims to increase the number and size of investments made to small firms under the program. Perhaps equally important, the bill endeavors to halt the continued flight of SBICs that participate in the program by establishing an expedited licensing program. This will keep successful SBICs that are in good standing involved in the program.

The bill will also revise the SBIC leverage limitations to create an incentive for well-managed SBICs to remain in the program. This will be possible by allowing SBICs that are managed by the same management team to access the increased leverage limits available for a family of SBIC funds. Businesses will have access to greater investment under the provisions of the bill that expand the Energy Saving Debenture Program and increase the amounts of leverage available to invest in veteran-owned businesses. Burdensome SBA regulations that limit businesses' ability to prepay SBIC leverage will also be eliminated, enabling businesses to prepay a safe amount of their SBIC investment without prior approval from the SBA. This change will provide businesses with greater flexibility in managing investment funds they receive under the program.

Finally, the bill makes a number of technical revisions to the SBIC program that will increase the overall efficacy of the program.

I know that the Small Business Committee here in this House and this Subcommittee recognize how critical small business is to

the economic health of this country. That is why I want to thank my colleagues for their commitment to sponsoring legislation to improve programs that assist our country's small business owners. I am pleased to see my bill and my colleagues' legislation working their way through the legislative process, and look forward to seeing these bills become law.

With that, I yield back, Mr. Chairman. Thank you.

Chairman SCHRADER. Thank you.

[The information is included in the appendix.]

Chairman SCHRADER. Any other Member wish to speak?

Seeing none, the first order of business is to consider House Resolution 3723, the Small Business Credit Expansion and Loan Markets Stabilization Act of 2009, introduced by Representative Halvorson. This bill makes important steps to broaden the reach of the 7(a) SBA, SBA's largest lending program.

In the past, 7(a) has been a tremendously important initiative, but despite its historic value, the program is no longer living up to its full potential. As a result, many small firms have struggled to access the capital they need to weather the recession.

House Resolution 3723 is a comprehensive answer to this concern. Importantly, it extends the loan guarantees and fee exemptions established by the Recovery Act. It also makes 7(a) more adaptable, revising it to expand when markets contract. On their own, these two changes will make the program more affordable and more accessible. When coupled with larger loan sizes, they will go a long way in delivering the capital to the small firms when they need it most. In increasing the size of the 7(a) loans, we are giving entrepreneurs the financing they need to enhance their ventures, and we are doing it in a way that actually minimizes the risk to taxpayers.

Finally, H.R. 3723 expands efforts to bring affordable capital to rural regions and veteran entrepreneurs, both of which have historically been underrepresented in the small business community.

This bill is supported by the National Restaurant Association, the International Franchise Association, National Association of Federal Credit Unions, and National Cooperative Business Association, Independent Community Bankers of America, and the Credit Union National Association. I support this legislation and urge its adoption.

Are there any other Members that wish to be recognized on House Resolution 3723?

Representative Halvorson from Illinois.

Mrs. HALVORSON. Thank you, Chairman Schrader and Representative Buchanan, for holding this morning's markup. This is a great opportunity for us to consider legislation that will update the SBA's capital access programs.

I have held many small business roundtables throughout my district and have found that at every single one of them, the number one thing that comes up is the biggest challenges facing our small business owners is access to capital.

We all know that small businesses need capital to expand and to grow, but the tight credit market has been increasingly difficult for them to do so. The SBA's capital access programs are supposed to be a resource for small business owners when they have dif-

ficulty accessing credit from traditional sources. Unfortunately, we have seen a recent decrease in the SBA's loan volume.

In fiscal year 2009, SBA made 36 percent fewer loans than it did in 2008. This is something that must be addressed, and that is why I have introduced H.R. 3723, the Small Business Credit Expansion and Loan Markets Stabilization Act. My bill will improve and enhance SBA's flagship 7(a) loan program. It increases the maximum loan level and expands provisions in the American Recovery and Reinvestment Act that increases the SBA loan guarantee to 90 percent. H.R. 3723 also increases SBA's outreach to rural and small lenders to encourage them to participate in 7(a).

My bill will extend a few of the SBA's other capital access programs. H.R. 3723 extends the ARC loan program created by the Recovery Act and increases the maximum award from 35,000 to 50,000 interest free.

Finally, my bill will make the SBA's Community Express pilot program permanent. Community Express helps provide loans to businesses owned by women, minorities, and veterans.

H.R. 3723 will take major steps to improve the SBA's capital access programs so that we can provide our Nation's small business owners with the tools they will need to put us on the road to economic recovery. I ask for the Subcommittee's support, and I yield back the balance of my time.

Chairman SCHRADER. Does anyone else wish to speak on behalf of House Resolution 3723?

Seeing none, the Committee now moves to consideration of House Resolution 3723. The clerk will report the title of the bill, please.

The CLERK. To amend the Small Business Act to improve the activities carried out under section 7(a) of such act, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time. Does any Member seek recognition?

Seeing none, the question is on reporting House Resolution 3723 to the full Committee. All those in favor, say aye.

Those opposed, say no.

The bill is adopted and reported to the full Committee.

Chairman SCHRADER. We will now consider House Resolution 3739, the Job Creation Economic Development Through CDC Modernization Act of 2009, introduced by our Ranking Member Buchanan.

The Certified Development Company program helps businesses secure capital for fixed-asset purchases. This initiative relies on a unique financing process, one that allows both CDCs and private-sector lenders to invest in small firms. This arrangement helps businesses secure loans of up to $10 million at a fixed rate. That particular provision is critical as it provides an element of stability in these otherwise very uncertain times.

House Resolution 3739 will go a long way in modernizing the CDC program. Among its most important changes is an increase in loan size. By raising levels to 12.5 million, it will give middle-market firms a chance to participate in the SBA program. Meanwhile, CDCs stand to gain greater flexibility for liquidating defaulted

loans, and that alteration will ease costs to taxpayers. Finally, small firms will have an opportunity to make larger equity injections, thereby reducing their debt levels. Through these changes, the CDC program will remain a powerful tool for economic development.

The National Association of Development Companies supports this legislation, and I urge Members to support it as well.

Are there any Members who wish to be recognized?

Ranking Member Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

I think I mentioned obviously where I am at on this, but I do want to add one thing in terms of the SBA. In talking with a lot of banks and participants in the program, we really challenge the SBA. We need to figure out a way to get more banks to participate. A rot of them say it takes too long, it is not profitable. They have, it seems, very little or no interest in many of these programs, and many of the participants in the program get discouraged because it takes so long.

So I just want to add, as we are looking at these new proposals today, which I think will be enacted as a part of law, we have got to find a way for our participants, because the banks are carrying most of this out, because we have got people that want them, but for one reason or another they are not getting out to the public. People are saying it just takes too long, costs too much, and nobody is excited about them. So we have got to find a way to deal with that.

I yield back. Thank you.

Chairman SCHRADER. Thank you.

Does anyone else wish to be recognized?

Seeing none, the committee now moves to consideration of House Resolution 3739. The clerk will report the title of the bill.

The CLERK. To amend title V of the Small Business Investment Act of 1958 to provide for improved long-term financing to small business concerns, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting House Resolution 3739 to the full Committee. All those in favor, say aye.

Opposed.

Passage is unanimous. The bill is adopted and reported to the full Committee.

Chairman SCHRADER. The next order of business, consider House Resolution 3737, the Small Business Microlending Expansion Act of 2009, introduced by Representative Ellsworth.

The bill enhances SBA's Microloan Program, an initiative that supplements traditional loans with technical assistance. That combination allows borrowers to access the capital they need to start a business and the guidance they need to make that business a success.

Oftentimes it is the smallest firms that produce the largest returns in our economy in the future. They create jobs where there

were none before and deliver economic empowerment to historically underserved communities. House Resolution 3737 takes steps to bolster these small businesses by reducing their interest rates on loans. This is a key element, because lower interest rates give entrepreneurs more room for growth and greater flexibility for investment.

The Corporation for Enterprise Development supports this legislation. I urge Members to back it as well.

Are there any other Members that wish to be recognized on House Resolution 3737?

Seeing none, the Committee now moves to consideration of House Resolution 3737. The clerk will report the title of the bill.

The CLERK. To amend the Small Business Act to improve the Microloan Program, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting House Resolution 3737 to the full Committee. All those in favor, say aye.

Opposed, say no.

The ayes have it. The bill is adopted and reported to the full Committee.

Chairman SCHRADER. We will now consider House Resolution 3740, the Small Business Investment Company Modernization and Improvement Act of 2009, introduced by Representative Luetkemeyer.

House Resolution 3740 will update and streamline SBA's largest investment option, the Small Business Investment Company Program. After the participating securities program was cut in 2004, SBIC became best known for the debentures program, which provides debt-oriented capital to later-stage businesses. Despite changes to its original format, SBIC remains a critical initiative. House Resolution 3740 seeks to build on its success by increasing the number of and size of investments made in small firms. It also creates incentives to encourage participation amongst successful, well-managed SBICs.

To spur innovation this bill gives SBA the freedom to create a new pilot program within SBIC. While this authority would be subject to certain limitations, successful trial initiatives could inspire new investment models we need to see down the road.

The SBIC program remains an important part of SBA's investment portfolio, and House Resolution 3740 will ensure it continues to be a valuable asset. This legislation is supported by the National Association of Small Business Investment Companies, and I urge Members to support it.

Are there any Members that wish to be recognized?

Seeing none, the Committee now moves to consideration of House Resolution 3740. The clerk will report the title of the bill.

The CLERK. To amend the Small Business Investment Act of 1958 with respect to small business investment companies, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting House Resolution 3740 to the full Committee. All those in favor, signify by saying aye.

Those opposed, say no.

The ayes have it. The bill is adopted, reported to the full Committee.

Chairman SCHRADER. We will now consider House Resolution 3722, the Enhanced New Markets and Expanded Investment in Renewable Energy for Small Manufacturers Act of 2009, introduced by Representative Kirkpatrick.

The New Markets program operates as a public-private partnership between the SBA and licensed new markets venture capital companies. It is a vital source of investment for our underserved communities.

Since its enactment in 2001, the program has made available a total of $149 million. That includes $62.4 million in non-Federal funding for low-income areas across 15 States. House Resolution 3722 will expand that reach even further. It will do this by requiring that SBA ensure nationwide distribution for the new markets program, thereby growing its network of investment firms. Additionally, the legislation places an increased emphasis on small manufacturers in low-income areas. Doing so will bolster struggling sectors of our economy and the communities that have been hit hardest by this recession.

In the same vein, House Resolution 3722 addresses the needs of small suppliers in our beleaguered auto industry. It does this by increasing assistance for manufacturers looking to retool and update their operations.

For struggling communities across this country, the benefits of House Resolution 3722 will be twofold. Not only will it bring new investment, but it will also create much-needed jobs, and I urge Members to support this legislation.

Are there any Members who wish to be recognized on House Resolution 3722?

Representative Kirkpatrick from Arizona.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman.

Today I am pleased to offer House Resolution 3722, the Enhanced New Markets and Expanded Investment in Renewable Energy for Small Manufacturers Act. This legislation will reform two critical programs at the Small Business Administration. The New Markets Venture Capital Initiative provides investment capital to businesses in some of our Nation's most economically distraught communities. While this program has made significant contributions, several obstacles have prevented it from reaching its full potential.

In 2001, the Southwest Development Fund applied to be a new market venture capital company. The fund, located in Arizona, filled out the paperwork and received conditional approval from the Small Business Administration. Unfortunately, the fund was unable to obtain final approval from the SBA before the expiration of

the agency's deadline. As a result, promising sources of new capital for Arizona businesses never got off the ground. Investment dollars that could have sparked entrepreneurship in some of Arizona's most economically depressed communities, which I represent, went elsewhere. I suspect this story is all too common.

My bill will speed up the application process and provide operational assistance from SBA while applicants are awaiting final approval. This will mean more companies make it through the process and ultimately invest in small businesses.

Small manufacturers in low-income areas can benefit tremendously from new market venture capital investments. House Resolution 3722 spurs investments in small manufacturers in economically struggling communities. By helping these entrepreneurs, we can maintain a strong manufacturing base in this country and support good-paying jobs.

We can also support job growth by expanding entrepreneurs' role in clean energy fields like wind, solar, and biofuels. Small businesses are pioneering these new fields in Arizona and across the country. The Renewable Energy Capital Initiative was designed to help small businesses obtain capital for renewable fuels projects. Currently only smaller enterprises, those with less than $2 million in income over the last 2 years, are eligible to participate. By opening the program to all small businesses as defined by the SBA, we will further promote clean energy entrepreneurship.

Mr. Chairman, access to capital remains one of the toughest challenges facing our small businesses. House Resolution 3722 will strengthen two programs at the SBA that help small businesses raise investment capital. I urge passage of this bill, and I yield back.

Chairman SCHRADER. Thank you.

Anyone else wishing to comment on House Resolution 3722?

Seeing none, the Committee now moves to consideration of House Resolution 3722. The clerk will report the title of the bill, please.

The CLERK. To amend the Small Business Investment Act of 1958 to improve the New Markets Venture Capital and Renewable Fuel Capital Investment Programs, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting House Resolution 3722 to the full Committee. All those in favor, signify by saying aye.

Opposed, say nay.

The ayes have it. The bill is adopted and reported to the full Committee.

Chairman SCHRADER. We will now consider House Resolution 3014, the Small Business Health Information Technology Financing Act, introduced by Representative Dahlkemper.

Health information technology, or HIT, is the hardware and software that makes electronic medical records a reality. With widespread use, HIT has the potential to improve quality by preventing errors, reducing costs, and increasing administrative efficiency. But

HIT is a very costly commodity. As such, it is typically found only in large medical institutions. This is problematic, because most Americans rely on physicians in solo and small group practices. House Resolution 3014 remedies this by providing reduced-cost capital to small firms looking to purchase the technology. That way, doctors and patients in every pocket of this country can enjoy the benefits and rewards of HIT.

This legislation provides small firms with more than just the capital to purchase HIT. It is carefully tailored to meet the unique challenges small firms face in its adoption and implementation.

I believe that House Resolution 3014 can assist in improving health care in the United States, and I urge Members to join the American Dental Association and the American Osteopathic Association in supporting this legislation.

Are there any other Members that wish to be recognized at this time?

Seeing none, the Committee now moves to consideration of House Resolution 3014. The clerk will report the title of the bill.

The CLERK. To amend the Small Business Act to provide loan guarantees for the acquisition of health information technology by eligible professionals in solo and small group practices, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition to offer an amendment?

Seeing no amendments, the question is on reporting House Resolution 3014 to the full Committee. All those in favor, say aye.

Opposed, say no.

The ayes have it. The bill is adopted and reported to the full Committee.

Chairman SCHRADER. We will now consider House Resolution 3738, the Small Business Early-Stage Investment Act of 2009, sponsored by Representative Nye.

Beginning in the last quarter of 2008, investments in early-stage businesses plunged $5.4 billion. That drop marked a decline of 26.5 percent from the previous quarter and a dwindling of resources for small business startups. This is especially troubling, considering that these businesses are integral to creating new jobs and driving growth, particularly as the economy exits this recession.

Historically the SBA has relied on the SBIC Participating Securities Program to fill gaps in the capital markets. In the last 5 years, however, the agency has not licensed any new equity investment firms under this program. As a result, small firms have struggled to secure much-needed capital. House Resolution 3738 addresses that void, and it does so in a manner that balances the demands of the free market with the need to safeguard taxpayers' interests.

Under the legislation, SBA provides funds to highly qualified investment companies. In turn, these firms will direct investments to early-stage businesses in targeted industries such as information technology and agriculture. With those fields, investments will be geared towards research, development, and manufacturing.

House Resolution 3738 incorporates several measures to protect the taxpayers. These safeguards include a requirement that invest-

ment companies match grant requests with capital from non-Federal sources. SBA will also conduct audits of participating companies; that way we can be sure that grants are invested in a fashion that is consistent with our law. Furthermore, investment funds must commit to repaying all investors, including the SBA, with cash. Even more importantly, SBA will always be reimbursed first.

The IAO, the National Venture Capital Association, and the Association of Investment Companies all support this legislation, and I urge Members to support its passage.

Are there any other Members that wish to be recognized on House Resolution 3738?

Seeing none, the Committee now moves to consideration of House Resolution 3738. The clerk will report the title of the bill.

The CLERK. To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member wish to be recognized for the purpose of amendment?

Seeing no amendments, the question is on reporting House Resolution 3738 to the full Committee. All those in favor, say aye.

Those opposed, say no.

The ayes have it. The bill is adopted and reported to the full Committee.

Chairman SCHRADER. Finally, we will consider House Resolution 3743, the Small Business Disaster Readiness and Reform Act of 2009, introduced by Representative Griffith.

For businesses and homeowners touched by catastrophe, SBA's Disaster Loan Program is a financial lifeline. But if GAO's July report on the program is any guide, SBA still has a long ways to go in improving disaster loan funds.

House Resolution 3743 includes several provisions to ensure SBA can respond to the next major catastrophe. This legislation provides the agency with a variety of tools to improve its response process. To begin, it streamlines the manner in which disaster loans are processed, approved, disbursed, and repaid. In addressing shortcomings and planning, the bill establishes regional working groups. Doing so will enable SBA, hopefully, to respond to the multitude of different disasters that could impact our country. Finally, House Resolution 3743 tailors assistance to fit the express needs of small firms following a disaster.

In preparing for a national catastrophe, the agency's work is never done. That is because when it comes to disaster loans, SBA's primary task is to remain vigilant. House Resolution 3743 will ensure that it does, and will prevent complacency from taking root. I urge the adoption of this legislation.

Are there any other Members that wish to be recognized on House Resolution 3743?

Seeing none, the Committee now moves to consideration of House Resolution 3743. The clerk will report the title of the bill.

The CLERK. To amend the Small Business Act to improve the disaster relief programs of the Small Business Administration, and for other purposes.

[The information is included in the appendix.]

Chairman SCHRADER. I ask unanimous consent that the bill in its entirety be open for amendments at this time.

Does any Member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting House Resolution 3743 to the full Committee. All those in favor, say aye.

Those opposed, say no.

The ayes have it. The bill is adopted and reported to the full Committee.

This concludes our Subcommittee business for today. I ask unanimous consent that the Subcommittee is authorized to correct section numbers, punctuation, cross references, and make necessary technical and conforming corrections on the bills considered today. Without objection, so ordered.

I appreciate everyone's hard work. The markup is adjourned.

[Whereupon, at 10:37 a.m., the Subcommittee was adjourned.]

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111TH CONGRESS
1ST SESSION

H. R. 3723

To amend the Small Business Act to improve the activities carried out under section 7(a) of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2009

Mrs. HALVORSON introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend the Small Business Act to improve the activities carried out under section 7(a) of such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Credit Expansion and Loan Markets Stabilization Act of 2009".

SEC. 2. SMALL LENDER OUTREACH PROGRAM.

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

"(34) SMALL LENDER OUTREACH PROGRAM.—

The Administrator shall establish and carry out a

program to provide support to regional, district, and branch offices of the Administration to assist small lenders, who do not participate in the Preferred Lenders Program, to participate in the programs under this subsection.".

SEC. 3. RURAL LENDING OUTREACH PROGRAM.

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

"(35) RURAL LENDING OUTREACH PROGRAM.—

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

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

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

"(D) USE OF RURAL LENDERS.—The program shall be carried out through lenders lo-

1 cated in a rural area (as such term is defined
2 under subsection (m)(11)(C)) or, if a small
3 business concern located in a rural area does
4 not have a lender located within 30 miles of the
5 principal place of business of such concern,
6 through any lender chosen by such concern that
7 provides loans under this subsection.

8 "(E) TIME FOR APPROVAL.—The Adminis-
9 trator shall approve or disapprove a loan under
10 the program within 36 hours.

11 "(F) DOCUMENTATION.—The program
12 shall use abbreviated application and docu-
13 mentation requirements.

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

18 **SEC. 4. COMMUNITY EXPRESS PROGRAM MADE PERMA-**
19 **NENT.**

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

23 "(36) COMMUNITY EXPRESS PROGRAM.—

24 "(A) IN GENERAL.—The Administrator
25 shall carry out a Community Express Program

1 to provide loans under this subsection in ac-
2 cordance with this paragraph.
3 "(B) REQUIREMENTS.—For a loan made
4 under the Community Express Program, the
5 following shall apply:
6 "(i) The loan shall be in an amount
7 not exceeding $250,000.
8 "(ii) The loan shall be made to a
9 small business concern the majority owner-
10 ship interest of which is directly held by in-
11 dividuals the Administrator determines
12 are, without regard to the geographic loca-
13 tion of such individuals, women, members
14 of qualified Indian tribes, socially or eco-
15 nomically disadvantaged individuals, vet-
16 erans, or members of the reserve compo-
17 nents of the Armed Forces.
18 "(iii) The loan shall comply with the
19 collateral policy of the Administration.
20 "(iv) The loan shall include terms re-
21 quiring the lender to provide, at the ex-
22 pense of the lender, technical assistance to
23 the borrower through the lender or a third-
24 party provider.

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

SEC. 5. INCREASED VETERAN PARTICIPATION PROGRAM MADE PERMANENT.

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

(1) by redesignating the second paragraph (32), as added by section 208 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186; 122 Stat. 631), as paragraph (33); and

(2) in paragraph (33), as so redesignated by paragraph (1) of this section—

(A) by striking "pilot program" each place it appears and inserting "program";

(B) by striking subparagraphs (C) and (F); and

(C) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

SEC. 6. LEASING POLICY.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act, is further amended by striking paragraph (28) and inserting the following:

1 "(28) LEASING.—If a loan under this sub-
2 section is used to acquire or construct a facility, the
3 assisted small business concern—
4 "(A) shall permanently occupy and use not
5 less than 50 percent of the space in such facil-
6 ity; and
7 "(B) may, on a temporary or permanent
8 basis, lease to others not more than 50 percent
9 of the space in such facility.".

10 **SEC. 7. NATIONAL LENDER TRAINING PROGRAM.**

11 Section 7(a) of the Small Business Act (15 U.S.C.
12 636(a)), as amended by this Act, is further amended by
13 adding at the end the following:
14 "(37) NATIONAL LENDER TRAINING PRO-
15 GRAM.—
16 "(A) IN GENERAL.—The Administrator
17 shall establish and carry out, through the re-
18 gional offices of the Administration, a lender
19 training program for new and existing lenders
20 under this subsection with respect to the lend-
21 ing systems, policies, and procedures of the Ad-
22 ministration.
23 "(B) FEES.—The Administrator shall
24 charge a fee for the program established under

1 subparagraph (A) to reduce the cost of such
2 program to zero.
3 "(C) LIMITATION.—The program estab-
4 lished under subparagraph (A) may not be car-
5 ried out by contract with a nongovernmental
6 entity.".

7 **SEC. 8. APPLICATIONS FOR REPURCHASE OF LOANS.**

8 Section 7(a) of the Small Business Act (15 U.S.C.
9 636(a)), as amended by this Act, is further amended by
10 adding at the end the following:
11 "(38) APPLICATIONS FOR REPURCHASE OF
12 LOANS.—
13 "(A) IN GENERAL.—Not later than 45
14 days after the date of the receipt of a claim
15 from a lender for proper payment of the guar-
16 anteed portion of a loan under this subsection
17 due to default, the Administrator shall make a
18 final determination with respect to the approval
19 or denial of such claim.
20 "(B) LATE DETERMINATIONS.—If the Ad-
21 ministrator does not make a final determination
22 under subparagraph (A) in the time period
23 specified in such subparagraph, the claim shall
24 be approved and paid promptly.".

1 **SEC. 9. ALTERNATIVE SIZE STANDARD.**

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

5 "(5) In addition to any other size standard
6 under this subsection, the Administrator shall estab-
7 lish and permit a lender making a loan under section
8 7(a) to use an alternative size standard. The alter-
9 native size standard shall be based on factors includ-
10 ing the maximum tangible net worth and average
11 net income of a business concern.".

12 (b) APPLICABILITY.—Until the Administrator estab-
13 lishes under section 3(a)(5) of the Small Business Act,
14 as added by subsection (a) of this section, an alternative
15 size standard for use by a lender making a loan under
16 section 7(a) of such Act, the alternative size standard in
17 section 121.301(b) of title 13, Code of Federal Regula-
18 tions, shall apply in such a case.

19 **SEC. 10. PILOT PROGRAM AUTHORITY.**

20 Section 7(a) of the Small Business Act (15 U.S.C.
21 636(a)), as amended by this Act, is further amended by
22 striking paragraph (25) and inserting the following:

23 "(25) LIMITATION ON CONDUCTING PILOT
24 PROJECTS.—

25 "(A) LIMITATION ON NUMBER.—Not more
26 than 10 percent of the total number of loans

1 guaranteed in any fiscal year under this sub-
2 section may be awarded as part of a pilot pro-
3 gram.

4 "(B) DOLLAR LIMITATIONS.—

5 "(i) IN GENERAL.—With respect to
6 any pilot program under this subsection es-
7 tablished on or after the date of the enact-
8 ment of the Small Business Credit Expan-
9 sion and Loan Markets Stabilization Act of
10 2009, no loan shall be made under such
11 program if such loan would result in the
12 total amount of loans made during a fiscal
13 year under all such programs to be in ex-
14 cess of 5 percent of the total amount of
15 loans guaranteed in such fiscal year under
16 this subsection.

17 "(ii) CERTAIN PRE-EXISTING PRO-
18 GRAMS.—With respect to any pilot pro-
19 gram under this subsection established be-
20 fore the date of the enactment of the Small
21 Business Credit Expansion and Loan Mar-
22 kets Stabilization Act of 2009, no loan
23 shall be made under such program if such
24 loan would result in the total amount of
25 loans made during a fiscal year under all

1 such programs to be in excess of 10 per-
2 cent of the total amount of loans guaran-
3 teed in such fiscal year under this sub-
4 section.
5 "(C) EXPIRATION.—
6 "(i) IN GENERAL.—Except as pro-
7 vided in clause (iii), the duration of any
8 pilot program under this subsection may
9 not exceed 3 years.
10 "(ii) DESIGNATION AS NEW PRO-
11 GRAM.—For purposes of this subpara-
12 graph, a pilot program shall not be treated
13 as a new pilot program solely on the basis
14 of a modification or change in the pilot
15 program, including the change of its name.
16 "(iii) EXISTING PROGRAMS.—With re-
17 spect to any pilot program in existence on
18 the date of the enactment of the Small
19 Business Credit Expansion and Loan Mar-
20 kets Stabilization Act of 2009, such pro-
21 gram may continue in effect for a period
22 not exceeding 3 years after such date with-
23 out regard to the duration of such program
24 before such date.
25 "(D) REGULATIONS.—

1 "(i) IN GENERAL.—With respect to
2 each pilot program under this subsection,
3 including each pilot program in existence
4 on the date of the enactment of the Small
5 Business Credit Expansion and Loan Mar-
6 kets Stabilization Act of 2009, the Admin-
7 istrator shall—
8 "(I) issue regulations for such
9 program after providing notice in the
10 Federal Register and an opportunity
11 for comment; and
12 "(II) ensure that such regula-
13 tions are published in the Code of
14 Federal Regulations.
15 "(ii) PILOT PROGRAMS ESTABLISHED
16 AFTER DATE OF ENACTMENT.—With re-
17 spect to any pilot program established
18 after the date of the enactment of the
19 Small Business Credit Expansion and
20 Loan Markets Stabilization Act of 2009,
21 such program shall not take effect until
22 the requirements under this subparagraph
23 are satisfied.
24 "(E) REPEAL OF AUTHORITY TO WAIVE
25 CERTAIN RULES.—

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

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

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

SEC. 11. LOANS TO COOPERATIVES.

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

1 "(39) COOPERATIVES.—The Administration
2 may provide loans under this subsection to any coop-
3 erative that—
4 "(A) is not organized as a tax exempt enti-
5 ty;
6 "(B) is engaged in a legal business activ-
7 ity;
8 "(C) obtains financial benefits for the co-
9 operative and for the members of such coopera-
10 tive; and
11 "(D) is eligible under applicable size stand-
12 ards of the Administration, including that any
13 business entity that is a member of such coop-
14 erative is eligible under applicable size stand-
15 ards of the Administration.".

16 **SEC. 12. CAPITAL BACKSTOP PROGRAM.**

17 Section 7(a) of the Small Business Act (15 U.S.C.
18 636(a)), as amended by this Act, is further amended by
19 adding at the end the following:
20 "(40) CAPITAL BACKSTOP PROGRAM.—
21 "(A) IN GENERAL.—The Administrator
22 shall establish a process under which a small
23 business concern may submit an application to
24 the Administrator for the purpose of securing a
25 loan under this subsection. With respect to such

1 application, the Administrator shall collect all
2 information necessary to determine the credit-
3 worthiness and repayment ability of an appli-
4 cant and shall determine if such application
5 meets basic eligibility and credit standards for
6 a loan under this subsection.

7 "(B) PARTICIPATION OF LENDERS.—

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

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

21 "(iii) LOCAL LENDERS.—The Admin-
22 istrator shall first make available a loan
23 application described in clause (i) to lend-
24 ers within 100 miles of the principal office
25 of the loan applicant.

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

1 asset valuation, and other services related to
2 such sales. The Administrator may not sell any
3 loan under this subparagraph for less than 90
4 percent of the net present value of the loan, as
5 determined and certified by a qualified third
6 party.

7 "(D) LOANS NOT SOLD.—The Adminis-
8 trator shall maintain and service loans made by
9 the Administrator under this paragraph that
10 are not sold through the asset sales under this
11 paragraph.

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

14 "(i) such date occurs during a period
15 that—

16 "(I) begins on the date the Bu-
17 reau of Economic Analysis, or any
18 successor organization, makes a deter-
19 mination that the gross domestic
20 product of the United States has de-
21 creased for three consecutive quarters;
22 and

23 "(II) ends on the date the Bu-
24 reau of Economic Analysis, or any
25 successor organization, makes a deter-

1 mination that the gross domestic
2 product of the United States has in-
3 creased for two consecutive quarters;
4 and
5 "(ii) the number of loans provided
6 under this subsection prior to such date in
7 the fiscal year including such date is at
8 least 30 percent less than the number of
9 such loans provided prior to the same point
10 in the previous fiscal year.
11 "(F) IMPLEMENTATION.—The Adminis-
12 trator shall establish a group of at least 250 in-
13 dividuals available to carry out activities under
14 this paragraph on any date on which this para-
15 graph has effect under subparagraph (E). The
16 Administrator shall provide to such group the
17 training necessary to carry out activities under
18 this paragraph.
19 "(G) APPLICATION OF OTHER LAW.—
20 Nothing in this paragraph shall be construed to
21 exempt any activity of the Administrator under
22 this paragraph from the Federal Credit Reform
23 Act of 1990 (2 U.S.C. 661 et seq.).
24 "(H) AUTHORIZATION OF APPROPRIA-
25 TIONS.—In addition to amounts made available

1 to carry out this subsection, there are author-
2 ized to be appropriated such sums as may be
3 necessary to carry out this paragraph.".

4 **SEC. 13. LOANS TO FINANCE GOODWILL.**

5 Section 7(a) of the Small Business Act (15 U.S.C.
6 636(a)), as amended by this Act, is further amended by
7 adding at the end the following:

8 "(41) GOODWILL.—The Administrator may not
9 apply an application, processing, or approval stand-
10 ard to a loan for the purpose of financing goodwill
11 under this subsection, unless such standard applies
12 to all loans under this subsection.".

13 **SEC. 14. APPELLATE PROCESS AND OMBUDSMAN.**

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

16 (1) by redesignating section 44 as section 45;
17 and

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

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

20 "(a) APPELLATE PROCESS.—

21 "(1) IN GENERAL.—Not later than 270 days
22 after the date of the enactment of the Small Busi-
23 ness Credit Expansion and Loan Markets Stabiliza-
24 tion Act of 2009, the Administrator shall establish
25 an independent appellate process within the Admin-

1 istration. The process shall be available to review
2 material determinations made by the Administration
3 that affect a lender or investment company that par-
4 ticipates or is applying to participate in a program
5 administered by the Administration.

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

9 "(A) any appeal of a material determina-
10 tion by the Administration is heard and result-
11 ing recommendations are provided expedi-
12 tiously; and

13 "(B) appropriate safeguards exist for pro-
14 tecting the appellant from retaliation by Admin-
15 istration employees.

16 "(3) COMMENT PERIOD.—Not later than 180
17 days after the date of the enactment of the Small
18 Business Credit Expansion and Loan Markets Sta-
19 bilization Act of 2009, the Administrator shall pro-
20 vide an opportunity for notice and comment on pro-
21 posed guidelines for the establishment of an inde-
22 pendent appellate process under this section.

23 "(b) AGENCY OMBUDSMAN.—

24 "(1) ESTABLISHMENT.—Not later than 180
25 days after the date of the enactment of the Small

1 Business Credit Expansion and Loan Markets Sta-
2 bilization Act of 2009, the Administrator shall ap-
3 point an ombudsman.
4 "(2) DUTIES.—The ombudsman appointed in
5 accordance with paragraph (1) shall—
6 "(A) act as a liaison between the Adminis-
7 tration and any lender or investment company
8 that participates or is applying to participate in
9 a program administered by the Administration
10 with respect to a problem such entity may have
11 in dealing with the Administration resulting
12 from a material determination made by the Ad-
13 ministration; and
14 "(B) ensure that safeguards exist to en-
15 courage complainants to come forward and pre-
16 serve confidentiality.
17 "(c) OTHER AUTHORITY.—An individual carrying
18 out the independent appellate process established under
19 subsection (a) or the position of ombudsman established
20 under subsection (b) is authorized to—
21 "(1) examine records and documents relating to
22 a matter under review pursuant to such subsections;
23 and
24 "(2) initiate the review of a matter under such
25 subsections if such individual believes that Adminis-

1 tration procedures have not been followed as in-
2 tended with respect to such matter, without regard
3 to whether an appeal or complaint has been made.
4 "(d) LIMITATIONS.—
5 "(1) IN GENERAL.—An individual carrying out
6 the independent appellate process established under
7 subsection (a) or the position of ombudsman estab-
8 lished under subsection (b) may not, as a result of
9 the authority provided under this section—
10 "(A) make, change, or set aside a law, pol-
11 icy, or administrative decision;
12 "(B) make binding decisions or determine
13 rights;
14 "(C) directly compel an entity to imple-
15 ment the recommendations of such individual;
16 or
17 "(D) accept jurisdiction over an issue that
18 is pending in a legal forum.
19 "(2) RULE OF CONSTRUCTION.—Activities car-
20 ried out under this section may not be construed—
21 "(A) as a formal investigation, formal
22 hearing, or binding decision;
23 "(B) as limiting any remedy or right of ap-
24 peal;

1 "(C) as affecting any procedure concerning
2 grievances, appeals, or administrative matters
3 under law; or
4 "(D) as a substitute for an administrative
5 or judicial proceeding.
6 "(e) REPORT.—Not later than one year after the date
7 of the enactment of the Small Business Credit Expansion
8 and Loan Markets Stabilization Act of 2009 and annually
9 thereafter, the Administrator shall submit to the Com-
10 mittee on Small Business of the House of Representatives
11 and the Committee on Small Business and Entrepreneur-
12 ship of the Senate a report describing and providing the
13 status of appeals made under subsection (a) and com-
14 plaints made under subsection (b).
15 "(f) DEFINITIONS.—In this section, the following
16 apply:
17 "(1) MATERIAL DETERMINATION.—The term
18 'material determination' includes determinations re-
19 lating to—
20 "(A) applications for payment relating to a
21 loan guarantee; and
22 "(B) the ability of an entity to participate
23 in an Administration loan or investing program.
24 "(2) INDEPENDENT APPELLATE PROCESS.—
25 The term 'independent appellate process' means a

1 review by an Administration official who does not di-
2 rectly or indirectly report to the Administration offi-
3 cial who made the material determination under re-
4 view.".

5 **SEC. 15. EXTENSION OF RECOVERY AND RELIEF LOAN BEN-**
6 **EFITS.**

7 (a) FEE REDUCTIONS.—Section 501 of title V of di-
8 vision A of the American Recovery and Reinvestment Act
9 of 2009 (Public Law 111–5) is amended—

10 (1) in subsection (a) by striking "September
11 30, 2010" and inserting "September 30, 2011"; and

12 (2) in subsection (c) by striking paragraph (2).

13 (b) ECONOMIC STIMULUS LENDING PROGRAM FOR
14 SMALL BUSINESSES.—Section 502(f) of title V of division
15 A of the American Recovery and Reinvestment Act of
16 2009 (Public Law 111–5) is amended by striking "the
17 date 12 months after the date of enactment of this Act"
18 and inserting "September 30, 2011".

19 **SEC. 16. REDUCED DOCUMENTATION FOR BUSINESS STA-**
20 **BILIZATION LOANS.**

21 Section 506(a) of title V of division A of the Amer-
22 ican Recovery and Reinvestment Act of 2009 (Public Law
23 111–5) is amended by adding at the end the following:
24 "In carrying out such program, the Administrator shall
25 establish and utilize a one-page application for loans under

1 this section and shall authorize lenders to utilize the same
2 documentation and procedural requirements for loans
3 under this section as such lenders utilize for other loans
4 of a similar size and type.".

5 **SEC. 17. EXPANDED ELIGIBILITY FOR BUSINESS STABILIZA-**
6 **TION LOANS.**

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

11 **SEC. 18. INCREASED AMOUNT OF BUSINESS STABILIZATION**
12 **LOANS.**

13 Section 506(d) of title V of division A of the Amer-
14 ican Recovery and Reinvestment Act of 2009 (Public Law
15 111–5) is amended by striking "$35,000" and inserting
16 "$50,000".

17 **SEC. 19. EXTENSION OF BUSINESS STABILIZATION LOANS.**

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

1 **SEC. 20. SBA SECONDARY MARKET LENDING AUTHORITY**
2 **MADE PERMANENT.**

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

6 (1) by striking subsection (e); and

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

9 **SEC. 21. SBA SECONDARY MARKET LENDING AUTHORITY**
10 **EXPANDED.**

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

14 (1) in subsection (c)(1) by adding at the end
15 the following: "Such process shall include the des-
16 ignation of each lender participating in a program
17 under section 7(a) of the Small Business Act as a
18 Systematically Important Secondary Market Broker-
19 Dealer for purposes of this section."; and

20 (2) in subsection (e), as so redesignated by sec-
21 tion 20 of this Act, by adding at the end the fol-
22 lowing: "To the extent that the cost of an elimi-
23 nation or reduction of fees is offset by appropria-
24 tions, the Administrator shall in lieu of the fee oth-
25 erwise applicable under this subsection collect no fee
26 or reduce fees to the maximum extent possible.".

1 **SEC. 22. INCREASED LOAN LIMITS.**

2 Section 7(a) of the Small Business Act (15 U.S.C.
3 636(a)), as amended by this Act, is further amended—
4 (1) in paragraph (2)(A)—
5 (A) in clause (i)—
6 (i) by inserting after "$150,000" the
7 following: "and is less than or equal to
8 $2,000,000"; and
9 (ii) by striking "or" at the end;
10 (B) in clause (ii) by striking the period at
11 the end and inserting "; or"; and
12 (C) by adding at the end the following:
13 "(iii) 50 percent of the balance of the
14 financing outstanding at the time of dis-
15 bursement of the loan, if such balance ex-
16 ceeds $2,000,000."; and
17 (2) in paragraph (3)(A) by striking
18 "$2,000,000" and inserting "$3,000,000".

19 **SEC. 23. REAL ESTATE APPRAISALS.**

20 Section 7(a)(29) of the Small Business Act (15
21 U.S.C. 636(a)(29)) is amended—
22 (1) in the matter preceding subparagraph (A)
23 by striking "a State licensed or certified appraiser"
24 and inserting "an appraiser licensed or certified by
25 the State in which such property is located";

1 (2) in subparagraph (A) by striking
2 "$250,000" and inserting "$400,000"; and
3 (3) in subparagraph (B) by striking
4 "$250,000" and inserting "$400,000".

5 **SEC. 24. ADDITIONAL SUPPORT FOR EXPRESS LOAN PRO-**
6 **GRAM.**

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

12 **SEC. 25. AUTHORIZATION OF APPROPRIATIONS.**

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

16 "(f) FISCAL YEARS 2010 AND 2011.—
17 "(1) PROGRAM LEVELS.—For the programs au-
18 thorized by this Act, in each of fiscal years 2010 and
19 2011 commitments for general business loans au-
20 thorized under section 7(a) may not exceed
21 $20,000,000,000.
22 "(2) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated such sums
24 as may be necessary to carry out paragraph (1).".

1 **SEC. 26. REGULATIONS.**

2 After an opportunity for notice and comment, but not
3 later than 180 days after the date of the enactment of
4 this Act, the Administrator shall issue regulations to carry
5 out this Act and the amendments made by this Act.

○

I

111TH CONGRESS
1ST SESSION

H. R. 3739

To amend title V of the Small Business Investment Act of 1958 to provide for improved long-term financing to small business concerns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. BUCHANAN introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend title V of the Small Business Investment Act of 1958 to provide for improved long-term financing to small business concerns, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Job Creation and Economic Development Through CDC Modernization Act of 2009".

TITLE I—GENERAL PROVISIONS

SEC. 101. PROGRAM LEVELS.

Section 20 of the Small Business Act is amended by adding the following new subsection after subsection (e):

"(f) PROGRAM LEVELS.—

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

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

SEC. 102. DEFINITIONS.

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

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

"(6) the term 'development company' means any corporation organized in order promote economic development and the growth of small business concerns and includes companies chartered under a

special State law authorizing them to operate on a statewide basis;".

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

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

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

"(A) a State or a political subdivision of a State, or

"(B) a combination of political subdivisions which—

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

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

"(iii) include an area in an adjacent State if it is part of a local economic area, a rural area or has a population determined by the Administrator to be insuffi-

1 cient to support the formation of a sepa-
2 rate development company;
3 such term includes entities meeting the require-
4 ments of clauses (i) through (iii), such as, but
5 not limited to, a council of governments, re-
6 gional development corporation, regional plan-
7 ning commission, or economic development dis-
8 trict;
9 "(22) the term 'member' means any person au-
10 thorized to vote for a director of a corporation or the
11 dissolution or merger of a company. For purposes of
12 this definition, a shareholder of a for-profit corpora-
13 tion shall be considered a member;
14 "(23) the terms 'rural' and 'rural area' shall
15 have the same meaning as those terms are given in
16 section 1991(a)(13)(A) of title 7, United States
17 Code; and
18 "(24) the term 'small manufacturer' means a
19 small business concern—
20 "(A) the primary business of which is clas-
21 sified in sector 31, 32, or 33 of the North
22 American Industrial Classification System; and
23 "(B) all of the production facilities of
24 which are located in the United States.".

TITLE II—CERTIFIED DEVELOPMENT COMPANIES

SEC. 201. CERTIFIED DEVELOPMENT COMPANIES.

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

"SEC. 501. CERTIFIED DEVELOPMENT COMPANIES.

"(a) CERTIFIED DEVELOPMENT COMPANY DEBENTURE AUTHORITY.—Only development companies certified by the Administrator shall have the authority to issue debentures under this Act.

"(b) CERTIFICATION STANDARDS.—A development company shall be certified for the purposes of issuing debentures if the Administrator determines that it meets each of the following criteria:

"(1) SMALL CONCERN.—

"(A) IN GENERAL.—Except as provided in subparagraph (C) of paragraph (2), the company, including its affiliates, shall have no more than 200 employees.

"(B) CONTROL.—Except as provided in paragraph (2) (B) or (C) the company shall not be under the control of any other concern.

"(C) NOT FOR PROFIT.—The development company is organized as a not-for-profit corporation.

1 "(2) EXCEPTIONS.—

2 "(A) FOR PROFIT STATUS.—If a develop-
3 ment company was chartered as a for-profit
4 corporation and issued debentures prior to Jan-
5 uary 1, 1987, the company shall not be re-
6 quired to change its status to not-for-profit in
7 order to be certified.

8 "(B) AFFILIATION GRANDFATHER.—Any
9 company that was authorized by the Adminis-
10 trator to issue debentures before December 31,
11 2005, shall be eligible for certification without
12 regard to its status as part of, or its affiliation
13 with, any other not-for-profit corporation or
14 local governmental entity unless that not-for-
15 profit corporation or local governmental entity
16 is another entity that issues debentures under
17 this title.

18 "(C) AFFILIATION WITH LOCAL GOVERN-
19 MENTAL ENTITIES.—Any company that was or-
20 ganized after the date of enactment of the Job
21 Creation and Economic Development through
22 CDC Modernization Act of 2009 shall be eligi-
23 ble for certification without regard to its status
24 as part of or affiliation with any local govern-
25 mental entity.

1 "(3) GOOD STANDING.—A development com-
2 pany shall be in good standing and comply with all
3 laws, in every State in which it is incorporated or
4 authorized to conduct business.
5 "(4) MEMBERSHIP.—
6 "(A) IN GENERAL.—The development com-
7 pany shall have at least 25 members.
8 "(B) VOTING RIGHTS.—No member shall
9 control more than 10 percent of the total voting
10 power in the development company.
11 "(C) RESIDENCE.—Members must be resi-
12 dents of the State in which the development
13 company is chartered or authorized to do busi-
14 ness.
15 "(D) DIVERSITY.—The development com-
16 pany must have at least one member from each
17 of the following:
18 "(i) A local governmental entity.
19 "(ii) A financial institution subject to
20 regulation by a Federal organization be-
21 longing to the Federal Financial Institu-
22 tions Examination Council and provides
23 long-term fixed asset financing in the com-
24 mercial market.

1 "(iii) A not-for-profit organization,
2 other than a development company, that is
3 dedicated to promoting economic growth.
4 "(iv) A for-profit businesses, other
5 than a financial institution described in
6 clause (ii).
7 "(E) EMPLOYMENT STATUS.—Membership
8 in a development company shall not be predi-
9 cated on employment status and an individual
10 who retired from or was terminated (for rea-
11 sons other than fraud or the commission of a
12 crime) from an entity described in subpara-
13 graph (D) shall be deemed to be from the orga-
14 nization described in that subparagraph.
15 "(5) BOARD OF DIRECTORS.—
16 "(A) IN GENERAL.—The development com-
17 pany's board consists of members and each di-
18 rector receives a majority vote of the members
19 unless the development company is a for-profit
20 corporation in which case the board need not
21 consist entirely of members.
22 "(B) BOARD REPRESENTATION.—There
23 shall be at least one director from not fewer
24 than 3 of the 4 types of organizations specified
25 in paragraph (4)(D) but no single type of orga-

1 nization shall have more than 50 percent rep-
2 resentation on the board of the development
3 company. If the development company is a for-
4 profit corporation, financial institution rep-
5 resentatives may make up more than 50 per-
6 cent of the board.

7 "(C) AFFILIATED ENTITY REPRESENTA-
8 TION RESTRICTIONS.—A development company
9 that is described in subsection (b)(1)(C) of this
10 section may have any or all of its board mem-
11 bers appointed by entities affiliated with the
12 company and may include common members
13 who also serve on the affiliate's board of direc-
14 tors if the appointment of board members was
15 exercised by an affiliate prior to December 31,
16 2005.

17 "(D) SPECIAL RULE FOR CERTAIN DEVEL-
18 OPMENT COMPANIES.—The board of directors
19 for any development company issuing deben-
20 tures before December 31, 2005, and incor-
21 porated under a State law requiring, or which
22 is interpreted by the State's legal department
23 as imposing specific requirements on, the num-
24 ber and selection of members, board members,
25 or both, and the rights and privileges conferred

1 by such State law, may adhere to such provi-
2 sions.
3 "(6) PROFESSIONAL MANAGEMENT AND
4 STAFF.—
5 "(A) IN GENERAL.—The development com-
6 pany shall have full-time independent profes-
7 sional management, including a chief executive
8 officer to manage the daily operations and a
9 full-time professional staff qualified to carry out
10 the functions authorized under this title.
11 "(B) UTILIZATION OF STAFF FROM AF-
12 FILIATED ENTITIES.—A development company
13 shall not be denied certification under this sec-
14 tion if its chief executive or full-time profes-
15 sional staff is from an affiliated entity as de-
16 scribed in subsection (b)(1)(C).
17 "(C) STAFF UNDER CONTRACT.—The Ad-
18 ministrator shall not deny certification to a de-
19 velopment company that contracts for its full
20 time staff if one of the following conditions is
21 met:
22 "(i) The development company is lo-
23 cated in a rural area, obtains its staff
24 through contract from another develop-
25 ment company that is certified by the Ad-

1 ministrator and that development company
2 operates in the same or a contiguous
3 State.
4 "(ii) The development company had
5 issued debentures under this title prior to
6 December 31, 2005, and had contracted
7 with a for-profit business concern to pro-
8 vide staffing and management services.
9 "(c) APPLICATIONS.—
10 "(1) DEVELOPMENT COMPANIES ISSUING DE-
11 BENTURES BEFORE SEPTEMBER 30, 2009.—
12 "(A) SHORT FORM APPLICATION.—(i) For
13 any development company that issued deben-
14 tures pursuant to this title before September
15 30, 2009, the Administrator shall develop, after
16 an opportunity for notice and comment, no
17 later than 90 days after the date of enactment
18 of the Job Creation and Economic Development
19 Through CDC Modernization Act of 2009, a
20 short-form application that contains sufficient
21 information for the Administrator to determine
22 that the development company currently meets
23 the standards set forth in subsection (b). In de-
24 veloping such application, the Administrator
25 shall be required to limit the amount of paper-

1 work necessary to determine whether the devel-
2 opment company meets the standards for cer-
3 tification and may limit the application to the
4 filing of reports previously submitted to the Ad-
5 ministrator.
6 "(ii) For those companies that obtain staff
7 through contracts, the application shall include
8 a copy of the contract.
9 "(B) CERTIFICATION DECISION.—(i) The
10 Administrator shall certify the development
11 company if the application demonstrates that
12 the applicant meets the standards in subsection
13 (b). The decision to certify or not approve the
14 request for certification shall be made within 7
15 business days from the date the initial submis-
16 sion of the application is received by the Ad-
17 ministrator. If the Administrator takes no ac-
18 tion to approve or disapprove within 7 business
19 days, the application for certification is deemed
20 approved and no further action is required by
21 the Administrator or the development company
22 to obtain certification. If the Administrator dis-
23 approves the application, the Administrator
24 shall provide in writing within 3 business days
25 the reasons for the disapproval. If such docu-

1 ment is not provided within the time specified,
2 the application is deemed approved and no fur-
3 ther action is required by the Administrator or
4 the development company to obtain certifi-
5 cation.

6 "(ii) For those development companies
7 that submit contracts under subparagraph
8 (A)(ii), the Administrator is limited in rejecting
9 the application only if the Administrator finds
10 that the entity servicing the applicant is no
11 longer able to provide the employees or services
12 needed by the applicant to perform the func-
13 tions that would be authorized under this title.

14 "(C) APPLICATION RESUBMITTAL.—If the
15 Administrator disapproves the application for
16 certification and provides a written statement
17 as set forth in subparagraph (B), the develop-
18 ment company may file a new application lim-
19 ited solely to the address the concerns of the
20 Administrator and the certification procedures
21 set forth in subparagraph (B) shall recom-
22 mence.

23 "(D) APPEALS.—If the Administrator dis-
24 approves an application in accordance with the
25 procedures of subparagraphs (B) or (C), the

1 applicant may, within 10 calendar days after
2 receipt of the disapproval, appeal such dis-
3 approval. The Administrator shall conduct a
4 hearing to determine such appeal pursuant to
5 sections 554, 556, and 557 of title 5, United
6 States Code, and shall issue a decision not later
7 than 45 days after the appeal is filed. The deci-
8 sion on appeal shall constitute final agency ac-
9 tion for purposes of chapter 7, title 5 United
10 States Code.

11 "(E) GRANDFATHERING.—

12 "(i) IN GENERAL.—For the period 2
13 years after date of enactment of the Job
14 Creation and Economic Development
15 through CDC Modernization Act of 2009,
16 any development company that was issuing
17 debentures on or before the date set forth
18 in this clause (i) shall be deemed to be a
19 certified development company.

20 "(ii) COMPLETION OF APPLICATION
21 PROCESS.—The procedures set forth in
22 this paragraph for determining certifi-
23 cation shall apply to any development com-
24 pany meeting the qualifications of clause
25 (i).

1 "(iii) EFFECT OF DENIAL.—The de-
2 nial or rejection of an application for cer-
3 tification as set forth in this subsection
4 shall have no affect on the ability of a de-
5 velopment company meeting the qualifica-
6 tions in clause (i) from continuing to issue
7 debentures during the entire two-year pe-
8 riod established in that clause.
9 "(iv) FAILURE TO OBTAIN CERTIFI-
10 CATION.—Any development company that
11 fails to obtain certification in accordance
12 with the procedures set forth in this para-
13 graph during the period set forth in clause
14 (i) shall be considered to be a new develop-
15 ment company and the procedures of para-
16 graph (2) shall apply. The authority to
17 issue debentures shall cease for any devel-
18 opment company covered by this subpara-
19 graph that has failed to obtain certification
20 from the Administrator during the time
21 period set forth in clause (i).
22 "(F) AUTOMATIC QUALIFICATION PROVI-
23 SION.—If the Administrator fails to implement
24 the certification process set forth in this para-
25 graph, any development company that was

1 issuing debentures before September 30, 2009,
2 pursuant to this title shall be considered cer-
3 tified until such time as the Administrator de-
4 velops the certification procedures set forth in
5 this paragraph.
6 "(G) SAVINGS CLAUSE.—Any action taken
7 by a development company or the Administrator
8 pursuant to this paragraph shall have no im-
9 pact on any guarantee of a debenture issued
10 prior to the date of enactment of the Job Cre-
11 ation and Economic Development Through
12 CDC Modernization Act of 2009.
13 "(2) APPLICATION PROCESS FOR NEW DEVEL-
14 OPMENT COMPANIES.—
15 "(A) IN GENERAL.—For any development
16 company that has not issued debentures prior
17 to September 30, 2009, the Administrator shall
18 develop no later than 180 days after the date
19 of enactment of the Job Creation and Economic
20 Development Through CDC Modernization Act
21 of 2009, after an opportunity for notice and
22 comment, an application form for certification
23 that provides the Administrator with sufficient
24 information to insure that the applicant meets
25 the standards set forth in subsection (b). The

1 Administrator shall certify such development
2 company or reject the application within 60 cal-
3 endar days from the date the initial submission
4 was received by the Administrator. If the Ad-
5 ministrator rejects the application, the Adminis-
6 trator shall provide in writing within 7 business
7 days after the decision, the reason for rejecting
8 the application.
9 "(B) APPEALS.—A development company
10 shall be able to appeal the disapproval of an ap-
11 plication under the procedures set forth in
12 paragraph (1)(D).".

13 **SEC. 202. CERTIFIED DEVELOPMENT COMPANY; OPER-**
14 **ATIONAL REQUIREMENTS.**

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

18 **"SEC. 502. OPERATIONAL REQUIREMENTS FOR CERTIFIED**
19 **DEVELOPMENT COMPANIES.**

20 "(a) MAINTENANCE OF STANDARDS FOR CERTIFI-
21 CATION.—Any company certified pursuant to section 501
22 shall continue to comply with the requirements of that sec-
23 tion to remain certified. The Administrator shall develop
24 a reporting form, which to the extent possible, incor-
25 porates other documents and reports already kept by cer-

1 tified development companies, demonstrating their contin-
2 ued compliance. The form shall be developed in a manner
3 that the estimated time for completion shall take no more
4 than 2 hours.

5 "(b) ETHICS AND CONFLICT OF INTERESTS.—A cer-
6 tified development company, its officers, employees, and
7 contractors shall act ethically and avoid activities which
8 constitute a conflict of interest or appear to constitute a
9 conflict of interest. For purposes of this subsection, con-
10 duct that is unethical includes, but is not limited to, the
11 actions specified in section 120.140 of title 13, Code of
12 Federal Regulations as in effect on January 1, 2009.

13 "(1) BY ASSOCIATES.—An associate may not be
14 an officer, director, or manager of more than 1 cer-
15 tified development company. The term 'associate'
16 shall have the same meaning given the term 'Asso-
17 ciate of a CDC' in section 120.10 of title 13, Code
18 of Federal Regulations, as in effect on January 1,
19 2009. For the purposes of this subsection, 10 per-
20 cent shall be substituted wherever section 120.10 of
21 title 13, Code of Federal Regulation uses 20 per-
22 cent.

23 "(2) BY ENTITIES.—Except as provided in sec-
24 tions 501(b)(5) and 501(b)(6), no person, sole pro-
25 prietorship, partnership, or corporation shall control

1 or have managerial control of more than one cer-
2 tified development company. Control means any of
3 the following:
4 "(A) The ability to appoint or remove
5 members of the company or member of its
6 board of directors.
7 "(B) The ability to modify or approve rate
8 or fee changes affecting revenues of the cer-
9 tified development.
10 "(C) The ability to veto, overrule, or mod-
11 ify decisions of the certified development com-
12 pany's body.
13 "(D) The ability to, either directly or con-
14 tractually, to appoint, hire, reassign, or dismiss
15 those managers and employees responsible for
16 the daily operations of the certified development
17 company.
18 "(E) The ability to access the certified de-
19 velopment company's resources or amend its
20 budget.
21 "(F) The ability to control another cer-
22 tified development company pursuant to provi-
23 sions in a contract.

1 "(c) MEETINGS.—The board of directors of the cer-
2 tified development company shall meet on a regular basis
3 to make policy decisions for the company.

4 "(d) LOAN COMMITTEES.—The board of directors of
5 a certified development company may use a loan com-
6 mittee to process loans in the State in which it operates
7 as well as adjacent local economic areas. Members of the
8 loan committee shall be residents of the certified develop-
9 ment company's state of operation or the adjacent local
10 economic area. Such loan committees shall meet on a peri-
11 odic basis as set forth by the board of directors.

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

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

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

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

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

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

12 "(3) CREDIT UNION AFFILIATION.—A certified
13 development company shall not lose its status due an
14 affiliation with an institution regulated by the Na-
15 tional Credit Union Administration if the develop-
16 ment company was affiliated with such an institu-
17 tion prior to January 1, 2007.

18 "(g) SERVICING AND PACKAGING GUARANTEED
19 LOANS.—A certified development company is authorized
20 to prepare applications for loans under sections 7(a) or
21 7(c) of the Small Business Act (15 U.S.C. 636), to service
22 such loans, and to charge a reasonable fee for servicing
23 such loans.

24 "(h) USE OF EXCESS FUNDS.—Any funds generated
25 by a certified development company from the issuance of

1 debentures under this title, the sale of debentures in the
2 private secondary market, or fees described in subsection
3 (g) that remain unexpended after payment of staff, oper-
4 ating, and overhead expenses shall be used by the certified
5 development company for—

6 "(1) operating reserves;

7 "(2) expanding the area in which the certified
8 development company operates through the methods
9 authorized in section 505 (relating to multi-State
10 operation);

11 "(3) investment in other community and local
12 economic development activity or community devel-
13 opment primarily in the State from which such
14 funds were generated; or

15 "(4) investment in small business investment
16 companies subject to the limitations in subsection
17 (i).

18 "(i) LIMITATIONS WITH RESPECT TO SMALL BUSI-
19 NESS INVESTMENT COMPANIES.—A certified development
20 company shall not—

21 "(1) invest excess funds in a small business in-
22 vestment company that the Administrator deter-
23 mines to be capitally impaired as set forth in section
24 107.1830 of title 13, Code of Federal Regulation, as
25 in effect on January 1, 2009, or any successor regu-

1 lation to that regulation, but may maintain its in-
2 vestment in such company if such investment was
3 made prior to the determination of capital impair-
4 ment; and

5 "(2) provide a debenture under this title to a
6 small business concern that has financing with a
7 small business investment company in which the cer-
8 tified development company has invested excess
9 funds.

10 "(j) ECONOMIC DEVELOPMENT ACTIVITIES.—A com-
11 pany certified pursuant to this section shall carry out each
12 of the following economic development activities that cre-
13 ate or preserve jobs in urban and rural areas:

14 "(1) The company shall provide long-term fi-
15 nancing to small business concerns through deben-
16 tures described in section 506.

17 "(2) The company shall operate any other pro-
18 gram to assist small business concerns or commu-
19 nities that promote local economic development and
20 job creation or preservation.

21 "(k) RESTRICTIONS ON ASSISTANCE.—

22 "(1) IN GENERAL.—After the date of enact-
23 ment of the Job Creation and Economic Develop-
24 ment Through CDC Modernization Act of 2009, no
25 certified development company may accept funding

1 from any source, including any Federal agency (as
2 that term is defined in section 551 of title 5, United
3 States Code) if the source imposes—
4 "(A) conditions on the types of small busi-
5 ness concerns that a certified development com-
6 pany may provide assistance to under this title;
7 or
8 "(B) conditions or requirements, directly
9 or indirectly, upon any small business concern
10 receiving assistance under this title.
11 "(2) EXCEPTION.—The conditions of subpara-
12 graphs (A) and (B) of paragraph (1) shall not apply
13 if the source provides all of the financing that will
14 be provided by the certified development company to
15 the small business concern, provided further that
16 any conditions or restrictions are limited solely to
17 the financing provided by the source of funding.
18 "(l) REVOCATION AND SUSPENSION.—The Adminis-
19 trator may suspend or revoke a certified development com-
20 pany's status if the Administrator determines, after a
21 hearing on the record as set forth in section 554, 556,
22 and 557 of title 5, United States Code, that the certified
23 development company no longer—
24 "(1) meets the eligibility criteria established
25 under section 501;

1 "(2) satisfies the operational standards in this
2 section; or
3 "(3) complies with the Administrator's rules,
4 regulations, or provisions of law.
5 "(m) EFFECT OF SUSPENSION OR REVOCATION.—A
6 suspension or revocation under subsection (l) shall not af-
7 fect any outstanding debenture guarantee.".

8 **SEC. 203. ACCREDITED LENDERS PROGRAM.**

9 Section 503 of the Small Business Investment of
10 1958 (15 U.S.C. 697) is amended to read as follows:

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

12 "(a) ESTABLISHMENT.—A certified development
13 company may apply for status to become an accredited
14 certified development company if it meets the operational
15 standards of section 502 and the criteria in subsection (b).
16 "(1) APPLICATION.—The Administrator shall,
17 after opportunity for notice and comment, develop
18 an application for certified development companies
19 seeking to become accredited certified development
20 companies.
21 "(2) PROCESSING OF APPLICATION.—The Ad-
22 ministrator shall make a determination within 30
23 days after a complete application has been filed by
24 the certified development company.

1 "(3) REAPPLICATION.—If the Administrator re-
2 jects the application, the Administrator shall provide
3 in writing the reasons for the rejection. Any certified
4 development company may reapply which will recom-
5 mence the processing time limits set forth in para-
6 graph (2), and such reapplication shall be limited to
7 addressing the reasons for rejection. If the Adminis-
8 trator rejects a second application, that shall be con-
9 sidered final agency action for purposes of Chapter
10 7 of title 5, United States Code.
11 "(b) STANDARDS FOR ACCREDITED CERTIFIED DE-
12 VELOPMENT COMPANY PROGRAM.—The Administrator
13 shall designate a certified development company as accred-
14 ited if it meets the following standards:
15 "(1) has been a certified development company
16 for not less than the preceding 12 months and has
17 issued debentures as authorized under this title dur-
18 ing that time period;
19 "(2) has well-trained, qualified personnel who
20 are knowledgeable in the lending policies and proce-
21 dures for certified development companies;
22 "(3) has the ability to process, close, and serv-
23 ice the loan issued under this title;

1 "(4) has a loss rate on the company's deben-
2 tures that is reasonable and acceptable to the Ad-
3 ministrator;
4 "(5) has a history of submitting to the Admin-
5 istrator complete and accurate debenture guaranty
6 application packages; and
7 "(6) has the ability to serve small business
8 credit needs for financing plant and equipment as a
9 certified development company.
10 "(c) EXPEDITED PROCESSING OF GUARANTEE AP-
11 PLICATIONS.—The Administrator shall develop an expe-
12 dited procedure for processing a guarantee application or
13 servicing action submitted by an accredited certified devel-
14 opment company. For purposes of this subsection, an ex-
15 pedited procedure is one that takes at least two business
16 days less than the processing performed for certified devel-
17 opment companies that have not been accredited.
18 "(d) SUSPENSION OR REVOCATION OF ACCREDITED
19 STATUS.—The Administrator may suspend or revoke a
20 certified development company's accredited status if the
21 Administrator determines, after a hearing on the record
22 as set forth in section 554, 556, and 557 of title 5, United
23 States Code, that the certified development company no
24 longer meets the eligibility criteria established under this
25 section (which shall not include a time limit on the term

1 of the certified development company's accredited status)
2 or failed to adhere to the Administrator's rules, regula-
3 tions, or is violating some other provision of law. Such
4 suspension or revocation shall have no effect on the devel-
5 opment company's status as certified.

6 "(e) EFFECT OF SUSPENSION OR REVOCATION ON
7 EXISTING GUARANTEES.—A suspension or revocation of
8 accredited status shall not affect any outstanding deben-
9 ture guarantee.

10 "(f) GRANDFATHER PROVISION.—Any certified de-
11 velopment company that was accredited by the date of en-
12 actment of the Job Creation and Economic Development
13 Through CDC Modernization Act shall remain accredited
14 for 24 months after that date. If the certified development
15 company does not have an application for accreditation ap-
16 proved by the Administrator within the 24 months, its ac-
17 creditation standard shall lapse.

18 "(g) AUTOMATIC QUALIFICATION.—

19 "(1) IN GENERAL.—Until the Administrator de-
20 velops procedures for granting accredited status, any
21 certified development company that was accredited
22 as of the date of enactment of the Job Creation and
23 Economic Development through CDC Modernization
24 Act of 2009 shall be deemed to be accredited.

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

6 "(3) EFFECT WHILE APPLICATION PENDING.—
7 The denial or rejection of an application for accred-
8 ited status as set forth in this section shall have no
9 affect on the ability of a development company that
10 meets the standard set forth in paragraph (1) from
11 maintaining its status during the 24 months speci-
12 fied in this subsection.

13 "(h) PROMULGATION OF ACCREDITING STAND-
14 ARDS.—The Administrator shall develop standards for ac-
15 crediting, suspension and revocation under the program
16 established by this section only after notice and an oppor-
17 tunity for comment as set forth in section 553(b) of title
18 5, United States Code. After the development of such
19 standards, the Administrator shall publish such standards
20 in the Code of Federal Regulations.

21 "(i) RULE OF CONSTRUCTION.—Any reference to the
22 term 'accredited lender' in any provision of law enacted,
23 or any regulation adopted, prior to the enactment of the
24 Job Creation and Economic Development Through CDC
25 Modernization Act of 2009 shall be deemed to be a ref-

1 erence to the term 'accredited certified development com-
2 pany'.".

3 **SEC. 204. PREMIER CERTIFIED LENDER PROGRAM.**

4 Section 504 of the Small Business Investment Act
5 of 1958 (15 U.S.C. 697a) is amended to read as follows:

6 **"SEC. 504. PREMIER CERTIFIED LENDER PROGRAM.**

7 "(a) ESTABLISHMENT.—A certified development
8 company accredited under section 503 may apply for sta-
9 tus to become a premier certified development company.

10 "(1) APPLICATION.—The Administrator shall,
11 after opportunity for notice and comment, develop
12 an application for accredited certified development
13 companies seeking to become premier certified devel-
14 opment companies.

15 "(2) PROCESSING OF APPLICATION.—The Ad-
16 ministrator shall make a determination within 60
17 days after a complete application has been filed by
18 an accredited certified development company.

19 "(3) REAPPLICATION.—If the Administrator re-
20 jects the application, the Administrator shall provide
21 in writing the reasons for the rejection. Any accred-
22 ited certified development company may reapply
23 which will recommence the processing time limits set
24 forth in paragraph (2), and such reapplication shall
25 be limited to addressing the reasons for rejection. If

1 the Administrator rejects a second application, that
2 shall be considered final agency action for purposes
3 of chapter 7 of title 5, United States Code.
4 "(b) STANDARDS FOR OBTAINING PREMIER CER-
5 TIFIED DEVELOPMENT COMPANY STATUS.—The Admin-
6 istrator shall designate an accredited certified develop-
7 ment company as a premier certified development com-
8 pany if the application submitted pursuant to subsection
9 (a) demonstrates that the accredited certified development
10 company meets the following standards:
11 "(1) Has been an accredited certified develop-
12 ment company for at least 12 months.
13 "(2) Has submitted to the Administrator ade-
14 quately analyzed debenture guarantee applications.
15 "(3) Has closed, in a proper manner following
16 the Administrator regulations, loans under this title.
17 "(4) Has serviced its loan portfolio in accord-
18 ance with the standards set by the Administrator.
19 "(5) Has established a loan loss reserve estab-
20 lished in accordance with this section that the Ad-
21 ministrator determines is sufficient to meet its obli-
22 gations to protect the Federal Government from the
23 risk of loss on each debenture guaranteed under this
24 section.

1 "(6) Has agreed, as part of the application and
2 in order to protect the Federal Government against
3 the risk of loss, to the following:
4 "(A) on account of a debenture, the pro-
5 ceeds of which were used to fund a loan ap-
6 proved prior to the date of enactment of the
7 Job Creation and Economic Development
8 through CDC Modernization Act of 2009,
9 agrees to reimburse the Administrator for 10
10 percent of any loss sustained by the Adminis-
11 trator as a result of a default by the company
12 in the payment of principal or interest on a de-
13 benture issued by such company and guaran-
14 teed by the Administrator;
15 "(B) on account of a debenture, the pro-
16 ceeds of which were used to fund a loan ap-
17 proved prior to the date of enactment of the
18 Job Creation and Economic Development
19 through CDC Modernization Act of 2009 and
20 which were issued during the period in which
21 the company had made a selection pursuant to
22 section 508(c)(7) of the Small Business Invest-
23 ment Act of 1958, as in effect on the day before
24 such date of enactment, agrees to reimburse the
25 Administrator for 15 percent of any loss sus-

1 tained by the Administrator as a result of a de-
2 fault by the company in the payment of prin-
3 cipal or interest on a debenture issued by such
4 company and guaranteed by the Administrator;
5 or
6 "(C) on account of a debenture, the pro-
7 ceeds of which are used to fund a loan approved
8 on or after the date of enactment of the Job
9 Creation and Economic Development through
10 CDC Modernization Act of 2009, upon closing,
11 pay to the Administrator a one-time participa-
12 tion fee in the amount equal to the higher of
13 the following:
14 "(i) 0.25 percent of the amount of the
15 debenture.
16 "(ii) A percent of the amount of the
17 debenture equal to 10 percent of the
18 amount of the company's historic loss rate
19 on debentures guaranteed under this sec-
20 tion as determined by the Administrator.
21 The rate specified by this clause shall be
22 determined annually based upon the com-
23 pany's loan losses as of close of business
24 on June 30th and notice of the determina-
25 tion shall be provided to each company not

1 later than August 31. Such rate shall be
2 applicable to loans approved during the fis-
3 cal year commencing after the determina-
4 tion is made and shall expire and have no
5 further application after the end of such
6 fiscal year. If no timely determination has
7 been made prior to the commencement of
8 a fiscal year, including the year of enact-
9 ment of the Job Creation and Economic
10 Development through CDC Modernization
11 Act of 2009, one may be made after the
12 commencement and it shall be applicable
13 to loans approved during the balance of
14 such fiscal year commencing 30 days after
15 notification to the development company
16 involved.

17 "(c) SUSPENSION OR REVOCATION OF PREMIER STA-
18 TUS.—The Administrator may suspend or revoke an ac-
19 credited certified development company's premier status
20 if the Administrator determines, after a hearing on the
21 record as set forth in section 554, 556, and 557 of title
22 5, United States Code, that the accredited certified devel-
23 opment company no longer meets the eligibility criteria for
24 premier status as established under this section or failed
25 to adhere to the Administrator's rules, regulations, or is

1 violating some other provision of law. Such revocation or
2 suspension shall have no effect on its status as an accred-
3 ited certified development company.

4 "(d) LOAN LOSS RESERVE.—

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

9 "(A) segregated funds on deposit in an ac-
10 count or accounts with a federally insured de-
11 pository institution or institutions selected by
12 the company, subject to a collateral assignment
13 in favor of, and in a format acceptable to, the
14 Administrator that shall amount to 10 percent
15 of the company's exposure as determined pursu-
16 ant to subsection (b)(6);

17 "(B) irrevocable letter or letters of credit,
18 with a collateral assignment in favor of, and a
19 commercially reasonable format acceptable to,
20 the Administrator; or

21 "(C) any combination of the assets de-
22 scribed in subparagraphs (A) and (B).

23 "(2) CONTRIBUTIONS.—The company shall
24 make contributions to the loss reserve, either cash or

1 letters of credit as provided above, in the following
2 amounts and at the following intervals:
3 "(A) 50 percent when a debenture is
4 closed.
5 "(B) 25 percent additional not later than
6 1 year after a debenture is closed.
7 "(C) 25 percent additional not later than
8 2 years after a debenture is closed.
9 "(3) REPLENISHMENT.—If a loss has been sus-
10 tained by the Administrator, any portion of the loss
11 reserve, and other funds provided by the premier
12 certified development company as necessary, may be
13 used to reimburse the Administrator for the premier
14 certified development company's share of the loss as
15 provided for in subsection (b)(6). If the premier cer-
16 tified development company utilizes the reserve, it
17 shall, within 30 calendar days, replace an equivalent
18 amount of funds.
19 "(4) DISBURSEMENTS.—
20 "(A) IN GENERAL.—The Administrator
21 shall allow the premier certified development
22 company to withdraw from the loss reserve
23 amounts attributable to any debenture that has
24 been repaid.

1 "(B) REDUCTION.—The Administrator
2 shall allow the premier certified development to
3 withdraw from the loss reserve such amounts as
4 are in excess of 1 percent of the aggregate out-
5 standing balances of debentures to which such
6 loss reserve relates. The reduction authorized
7 by this subparagraph shall not apply with re-
8 spect to any debenture before 100 percent of
9 the contribution described in paragraph (2)
10 with respect to such debenture has been made.
11 "(C) RULE OF CONSTRUCTION.—The pro-
12 vision contained in subparagraph (B) shall be
13 read as if enacted prior to a date 2 years and
14 90 days after the date of enactment of the Job
15 Creation and Economic Development through
16 CDC Modernization Act of 2009.
17 "(e) BUREAU OF PREMIER CERTIFIED DEVELOP-
18 MENT COMPANY LENDER OVERSIGHT.—
19 "(1) IN GENERAL.—There is hereby established
20 a Bureau of Premier Certified Development Com-
21 pany Lender Oversight in the Office of Lender Over-
22 sight at the United States Small Business Adminis-
23 tration which shall have responsibility and capability
24 for carrying out oversight of premier certified devel-

1 opment companies and such other responsibilities as
2 the Administrator designates.
3 "(2) ANNUAL REVIEW.—The Bureau estab-
4 lished in paragraph (1) annually shall review the fi-
5 nancing made by each premier certified development
6 company. Such review shall include the premier cer-
7 tified development company's credit decisions and
8 general compliance with the eligibility requirements
9 for each financing approved as a result of its status
10 as a premier certified development company.
11 "(3) RANDOM AUDITS.—The Bureau shall de-
12 velop and implement a method for sampling the de-
13 bentures issued by premier certified development
14 companies. Such sampling shall be similar to the
15 random file audits of development companies that
16 utilize the Abridged Submission Method described in
17 chapter 4 of subpart C of Standard Operating Pro-
18 cedure 50 10 (5)(A) as was in effect on March 2,
19 2009.
20 "(4) REVIEW OF LENDERS PROVIDING SENIOR
21 FINANCING.—
22 "(A) CALCULATION OF LOAN LOSS
23 RATE.—The Bureau shall periodically calculate
24 the loss rate of all debentures approved under
25 this section and shall calculate a loss rate on

1 the basis of the total debentures attributable to
2 projects approved by premier certified develop-
3 ment companies in which each lender is a par-
4 ticipating lender.
5 "(B) NOTIFICATION.—If the Bureau deter-
6 mines that the loss rate on debentures involving
7 an individual lender exceeds the average for all
8 debentures approved under this section, it shall
9 advise the Administrator.
10 "(5) USE OF REVIEWS AND AUDITS.—The Ad-
11 ministrator shall consider the findings under para-
12 graphs (2), (3), and (4) in carrying out the respon-
13 sibilities under subsection (h).
14 "(f) SALE OF CERTAIN DEFAULTED LOANS.—
15 "(1) NOTICE.—If, upon default in repayment,
16 the Administrator acquires a debenture issued by a
17 premier certified development company and identi-
18 fies such loan for inclusion in a bulk asset sale of
19 defaulted or repurchased loans or other financing, it
20 shall give prior notice thereof to any premier cer-
21 tified development company which has a contingent
22 liability under this section. The notice shall be given
23 to the premier certified development company as
24 soon as possible after the financing is identified, but
25 not less than 90 days before the date the Adminis-

1 trator first makes any records on such financing
2 available for examination by prospective purchasers
3 prior to its offering in a package of loans for bulk
4 sale.

5 "(2) LIMITATIONS.—The Administrator shall
6 not offer any loan described in paragraph (1) as
7 part of a bulk sale unless it—

8 "(A) provides prospective purchasers with
9 the opportunity to examine the Small Business
10 Administration's records with respect to such
11 loan; and

12 "(B) provides the notice required by para-
13 graph (1).

14 "(g) LOAN APPROVAL AUTHORITY.—

15 "(1) IN GENERAL.—A premier certified develop-
16 ment company may, under conditions determined by
17 the Administrator in regulations published in the
18 Code of Federal Regulations, issue guarantees on
19 debentures, approve, authorize, close, service, fore-
20 close, litigate (except that the Administrator may
21 monitor conduct of any such litigation), and liq-
22 uidate loans that are funded with proceeds of a de-
23 benture issued by a premier certified development
24 company unless the Administrator advises the com-
25 pany that loans involving a specific institutional

1 lender are to be submitted to the Administrator for
2 further consideration, and approval by the Adminis-
3 trator.

4 "(2) PROGRAM GOALS.—Each premier certified
5 development company shall establish a goal of proc-
6 essing no less than 50 percent of the applications for
7 assistance under this title that the premier certified
8 development company receives. Failure to meet this
9 goal shall have no affect on the company's status as
10 a premier certified development company under this
11 section.

12 "(3) SCOPE OF REVIEW.—The approval of a
13 loan and guarantee of a debenture by a premier cer-
14 tified development company shall be subject to final
15 approval as to the eligibility of any guarantee by the
16 Administrator as set forth in section 506, but such
17 final approval shall not include review of decisions
18 by the premier certified development company in-
19 volving creditworthiness, loan closing, or compliance
20 with legal requirements imposed by law or regula-
21 tion.

22 "(h) SUSPENSION OR REVOCATION.—The Adminis-
23 trator may suspend or revoke an accredited certified devel-
24 opment company's premier status if the Administrator de-
25 termines, after a hearing on the record as set forth in sec-

1 tion 554, 556, and 557 of title 5, United States Code,
2 that the accredited certified development company no
3 longer meets the eligibility criteria established under this
4 section, fails to maintain adequate loan loss reserves man-
5 dated in this section even if it meets the other eligibility
6 requirements for premier status, or violates the Adminis-
7 trator's rules, regulations, or some other provision of law.
8 The Administrator shall consider the review of the premier
9 certified development company conducted pursuant to sub-
10 section (e) in determining whether to suspend or revoke
11 an accredited development company's premier status.
12 Such suspension or revocation shall have no effect on the
13 development company's status as an accredited certified
14 development company.

15 "(i) EFFECT OF SUSPENSION OR REVOCATION.—A
16 suspension or revocation of premier status shall not affect
17 any outstanding debenture guarantee.

18 "(j) RULE OF CONSTRUCTION.—Any reference to the
19 term 'premier certified lender' or 'PCL' in legislation en-
20 acted, or regulations adopted, prior to the enactment of
21 the Job Creation and Economic Development Through
22 CDC Modernization Act of 2009 shall be deemed to be
23 a reference to the term 'premier certified development
24 company'.".

1 **SEC. 205. MULTI STATE OPERATIONS.**

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

4 **"SEC. 505. MULTI STATE OPERATIONS.**

5 "(a) AUTHORIZATION.—The Administrator shall per-
6 mit an accredited or premier certified development com-
7 pany to make loans or issue debentures in any State that
8 is contiguous to the State of incorporation of that com-
9 pany only if the company—

10 "(1) has members, from each of the States in
11 which it operates with not fewer than 25 members
12 who reside in such States;

13 "(2) has a board of directors that contains not
14 fewer than 2 members from each State in which the
15 company makes loans and issues debentures and are
16 residents of that State;

17 "(3) maintains a separate loan committee to
18 process loans in each expansion State and the mem-
19 bers of the loan committee are solely residents of the
20 expansion State; and

21 "(4) files an application developed by the Ad-
22 ministrator which provides—

23 "(A) notice of the intention to make loans
24 in multiple States;

25 "(B) specifies the States in which the com-
26 pany intends to make loans;

1 "(C) a list of members in each expansion
2 State; and
3 "(D) a detailed statement on how the com-
4 pany will comply with the requirements of this
5 subsection.
6 "(b) LOAN COMMITTEES.—The requirements of
7 paragraph (3) of subsection (a) shall not require a devel-
8 opment company to establish a loan committee in its State
9 of incorporation or in a local economic area outside the
10 State of incorporation unless such area is part of an ex-
11 pansion State.
12 "(c) REVIEW.—
13 "(1) IN GENERAL.—The Administrator shall re-
14 view each application for expansion under subsection
15 (a), but such review shall be limited to that informa-
16 tion needed to determine whether the company will
17 comply with the requirements of subsection (a).
18 "(2) DEADLINE FOR DECISION.—The Adminis-
19 trator shall make a decision on each application
20 under subsection (a) within 15 calendar days after
21 the receipt of the application. If no such decision is
22 granted, the application is deemed to be approved
23 and no further action is required by the applicant or
24 the Administrator for the company to expand into
25 the States specified in the application.

1 "(3) APPLICATION RESUBMITTAL.—If the Ad-
2 ministrator rejects the application for expansion, the
3 Administrator shall provide in writing the reasons
4 for denial within 10 calendar days of the decision.
5 The applicant then may resubmit the application but
6 the review of such resubmitted applications will be
7 limited only to the areas in which the Administrator
8 found the original application deficient. The dead-
9 lines in paragraph (2) shall apply to resubmitted ap-
10 plications.

11 "(4) APPEAL.—If a resubmitted application is
12 denied, the applicant may, within 10 calendar days
13 after receipt of the disapproval, appeal such dis-
14 approval. The Administrator shall conduct a hearing
15 to determine such appeal pursuant to sections 554,
16 556, and 557 of title 5, United States Code, and
17 shall issue a decisions not later than 45 days after
18 the appeal is filed. The decision on appeal shall con-
19 stitute final agency action for purposes of chapter 7,
20 title 5 United States Code.

21 "(d) FAILURE TO DEVELOP APPLICATION.—If the
22 Administrator fails to develop an application as required
23 in subsection (a)(4) within 60 days of the enactment of
24 Job Creation and Economic Development Through CDC
25 Modernization Act of 2009, an accredited or premier cer-

1 tified development company only need submit the informa-
2 tion required in subsection (a) to the Administrator to be
3 deemed eligible to commence operations authorized by this
4 section. Such eligibility shall not be terminated if the Ad-
5 ministrator develops an application after the 60-day period
6 set forth in this subsection.

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

12 "(f) LOCAL JOB CREATION REQUIREMENTS.—

13 "(1) IN GENERAL.—Any company making loans
14 in multiple States as authorized in this section shall
15 not count jobs created or retained in one State to-
16 wards any applicable job creation or retention re-
17 quirements mandated by this title in another State.

18 "(2) APPLICABILITY.—Any company operating
19 under the authority of this section shall be required
20 to meet any job creation or retention requirement of
21 this title on the date that is 2 years after the cer-
22 tified development company closed its first loan in
23 its new State of operation.

24 "(g) CONTIGUOUS STATES.—For the purposes of this
25 section, the States of Alaska and Hawaii shall be deemed

1 to be contiguous to any State abutting the Pacific Ocean.
2 Territories of the United States located in the Pacific
3 Ocean shall be deemed to be contiguous to any State abut-
4 ting the Pacific Ocean, including Alaska and Hawaii, and
5 territories of the United States located in the Caribbean
6 Sea shall be deemed contiguous to any State abutting the
7 Gulf of Mexico.

8 "(h) EXEMPTION FOR LOCAL ECONOMIC AREAS.—
9 Except as provided in subsection (a)(3) with respect to
10 loan committees, any certified, accredited, or premier de-
11 velopment company or applicant operating in a local eco-
12 nomic development area that crosses the border of another
13 State shall not be considered to be operating under the
14 provisions of this section and shall not be required to com-
15 ply with the requirements of this section for multi-State
16 operation.".

17 **SEC. 206. GUARANTY OF DEBENTURES.**

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

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

21 "(a) AUTHORITY TO GUARANTEE.—Except as pro-
22 vided in subsection (c), the Administrator may guarantee
23 the timely payment of all principal and interest as sched-
24 uled on any debenture issued by a certified development
25 company.

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

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

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

1 "(e) STANDARDS FOR ADMINISTRATOR GUARAN-
2 TEES.—No guarantee may be made with respect to any
3 debenture under this section unless—
4 "(1) the debenture is issued for the purpose of
5 making one or more loans to small business concerns
6 the proceeds of which shall be used for the purposes
7 set forth in section 507;
8 "(2) the interest rate on such debentures is not
9 less than the rate of interest determined by the Sec-
10 retary of the Treasury for purposes of section
11 303(b) of the Small Business Investment Act of
12 1958;
13 "(3) the aggregate amount of such debenture
14 does not exceed the amount of the loans to be made
15 from the proceeds of such debenture plus, at the
16 election of the borrower, other amounts attributable
17 to the administrative and closing costs of such loans,
18 except for the attorney fees of the borrower;
19 "(4) the amount of any loan to be made from
20 such proceeds does not exceed an amount equal to
21 50 percent of the cost of the project with respect to
22 which such loan is made;
23 "(5) the Administrator, except to the extent
24 provided in section 504 with respect to premier cer-

1 tified development companies, approves each loan to
2 be made from such proceeds; and
3 "(6) with respect to each loan made from the
4 proceeds of such debenture, the Administrator—
5 "(A) assesses and collects a fee, which
6 shall be payable by the borrower, in an amount
7 established annually by the Administration,
8 which amount shall not exceed—
9 "(i) the lesser of—
10 "(I) 0.9375 percent per year of
11 the outstanding balance of the loan;
12 or
13 "(II) the minimum amount nec-
14 essary to reduce the cost (as defined
15 in section 502 of the Federal Credit
16 Reform Act of 1990) to the Adminis-
17 trator of purchasing and guaranteeing
18 debentures under this title to zero;
19 and
20 "(ii) 50 percent of the amount estab-
21 lished under clause (i) in the case of a loan
22 made during the 2-year period beginning
23 on October 1, 2002, for the life of the
24 loan; and

1 "(B) uses the proceeds of such fee to offset
2 the cost (as such term is defined in section 502
3 of the Federal Credit Reform Act of 1990) to
4 the Administrator of making guarantees under
5 this section.

6 "(f) INTEREST RATES ON COMMERCIAL LOANS.—
7 Notwithstanding the provisions of the constitution or laws
8 of any State limiting the rate or amount of interest which
9 may be charged, taken, received, or reserved, the max-
10 imum legal rate of interest on any commercial loan which
11 funds any portion of the cost of the project financed pur-
12 suant to this title which is not funded by a debenture
13 guaranteed under this section shall be a rate which is es-
14 tablished by the Administrator who shall publish such rate
15 quarterly in, at a minimum, the Federal Register and on
16 the Administration's website.

17 "(g) DEBENTURE REPAYMENT.—Any debenture that
18 is issued under this section shall provide for the payment
19 of principal and interest on a semiannual basis.

20 "(h) CHARGES FOR ADMINISTRATOR'S EXPENSES.—
21 The Administrator may impose an additional charge for
22 administrative expenses with respect to each debenture for
23 which payment of principal and interest is guaranteed
24 under this section. Such administrative expenses may in-
25 clude—

1 "(1) development company fees for processing,
2 closing, servicing, late payment or loan assumption;
3 "(2) agent or trustee fees for central servicing,
4 underwriters, or debenture funding; and
5 "(3) fees charged by the Administrator for the
6 debenture guaranty and from the certified develop-
7 ment company to reduce the subsidy cost.
8 "(i) PARTICIPATION FEE.—The Administrator shall
9 collect a one-time fee in an amount equal to 50 basis
10 points on the total participation in any project of any
11 State or local government, bank, other financial institu-
12 tion, or foundation or not-for-profit institution. Such fee
13 shall be imposed only when the participation of the entity
14 described in the previous sentence will occupy a senior
15 credit position to that of the development company. All
16 proceeds of the fee shall be used to offset the cost (as
17 that term is defined in section 502 of the Credit Reform
18 Act of 1990) to the Administrator of making guarantees
19 under this section.
20 "(j) CERTIFIED DEVELOPMENT COMPANY FEE.—
21 The Administrator shall collect annually from each devel-
22 opment company a fee of 0.125 percent of the outstanding
23 principal balance of any guaranteed debenture authorized
24 by the Administrator after September 30, 1996. Such fee
25 shall be derived from the servicing fees collected by the

1 certified development company pursuant to regulation,
2 and shall not be derived from any additional fees imposed
3 on small business concerns. All proceeds of the fee shall
4 be used to offset the cost (as that term is defined in sec-
5 tion 502 of the Credit Reform Act of 1990) to the Admin-
6 istrator of making guarantees under this section.

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

10 "(l) CALCULATION OF SUBSIDY RATE.—All fees, in-
11 terest, and profits received and retained by the Adminis-
12 trator under this section shall be included in the calcula-
13 tions made by the Director of the Office of Management
14 and Budget to offset the cost (as that term is defined in
15 section 502 of the Federal Credit Reform Act of 1990)
16 to the Administrator of purchasing and guaranteeing de-
17 bentures under this title.

18 "(m) ACTIONS UPON DEFAULT.—

19 "(1) INITIAL ACTIONS.—Not later than the
20 45th day after the date on which a payment on a
21 loan funded through a debenture guaranteed under
22 this section is due and not received, the Adminis-
23 trator shall—

24 "(A) take all necessary steps to bring such
25 loan current; or

1 "(B) implement a formal written deferral
2 agreement.
3 "(2) PURCHASE OR ACCELERATION OF DEBEN-
4 TURE.—Not later than the 65th day after the date
5 on which a payment on a loan described in para-
6 graph (1) is due and not received, and absent a for-
7 mal written deferral agreement, the Administrator
8 shall take all necessary steps to purchase or accel-
9 erate the debenture.
10 "(3) PREPAYMENT PENALTIES.—With respect
11 to the portion of any project derived from funds not
12 provided by a debenture issued by a certified devel-
13 opment company or borrower, the Administrator—
14 "(A) shall negotiate the elimination of any
15 prepayment penalties or late fees on defaulted
16 loans made prior to September 30, 1996;
17 "(B) shall not pay any prepayment penalty
18 or late fee on the default based purchase of
19 loans issued after September 30, 1996; and
20 "(C) shall not pay default interest rate
21 higher than the interest rate on the note prior
22 to the date of default for any project financed
23 after September 30, 1996.
24 "(4) COLLECTION AND SERVICING.—

1 "(A) IN GENERAL.—In the event of the de-
2 fault of any loan and the repurchase of a de-
3 benture guaranteed by the Administrator under
4 this title, the Administrator shall continue to
5 delegate to the central servicing agent that was
6 contracted for that service as of January 1,
7 2009, or successor contractor the authority to
8 collect and disburse all funds or payments re-
9 ceived on such defaulted loans, including pay-
10 ments from guarantors or on notes in com-
11 promise of the original note. The central serv-
12 icing agent shall continue to provide an ac-
13 counting of income and expenses for any such
14 loan on the same basis it does for any other
15 loan issued under this title. The central serv-
16 icing agent shall make the accounting of income
17 and expenses and reports thereon available as
18 requested by the certified development company
19 that issued the debenture or the Administrator.
20 "(B) EFFECTIVE DATE.—The require-
21 ments of subparagraph (A) shall become effec-
22 tive 180 days after the date of enactment of the
23 Job Creation and Economic Development
24 Through CDC Modernization Act of 2009.".

1 **SEC. 207. ECONOMIC DEVELOPMENT THROUGH DEBEN-**
2 **TURES.**

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

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

6 "(a) IN GENERAL.—A certified development company
7 shall be prohibited from issuing a debenture under this
8 title unless the project funded with the debenture meets
9 one of the following economic development objectives:

10 "(1) The creation of job opportunities within
11 two years of the completion of the project or the
12 preservation or retention of jobs attributable to the
13 project.

14 "(2) Improving the economy of the locality,
15 such as stimulating other business development in
16 the community, bringing new income into the area,
17 or assisting the community in diversifying and stabi-
18 lizing its economy.

19 "(3) The achievement of one or more of the fol-
20 lowing public policy goals:

21 "(A) Business district revitalization or ex-
22 pansion of businesses in low-income commu-
23 nities which would be eligible for a new markets
24 tax credit under section 45(D)(a) of the Inter-
25 nal Revenue Code of 1986, or implementing
26 regulations issued under that section.

1 "(B) Expansion of exports.

2 "(C) Expansion of minority business devel-
3 opment or women-owned business development.

4 "(D) Rural development.

5 "(E) Expansion of small business concerns
6 owned and controlled by veterans, as defined in
7 section 3(q) of the Small Business Act (15
8 U.S.C. 632(q)), especially service-disabled vet-
9 erans, as defined in such section 3(q).

10 "(F) Enhanced economic competition, in-
11 cluding the advancement of technology, plan re-
12 tooling, conversion to robotics, or competition
13 with imports.

14 "(G) Changes necessitated by Federal
15 budget cutbacks, including defense related in-
16 dustries.

17 "(H) Business restructuring arising from
18 federally mandated standards or policies affect-
19 ing the environment or the safety and health of
20 employees.

21 "(I) Reduction of energy consumption by
22 at least 10 percent.

23 "(J) Increased use of sustainable design,
24 including designs that reduce the use of green-
25 house gas emitting fossil fuels, or low-impact

1 design to produce buildings that reduce the use
2 of nonrenewable resources and minimize envi-
3 ronmental impact.
4 "(K) Plant, equipment and process up-
5 grades of renewable energy sources such as the
6 small-scale production of energy for individual
7 buildings or communities consumption, com-
8 monly known as micropower, or renewable fuels
9 producers including biodiesel and ethanol pro-
10 ducers.
11 "(4) Debt refinancing to the extent permitted
12 by section 508(d).
13 "(b) JOB CREATION AND RETENTION REQUIRE-
14 MENTS.—
15 "(1) IN GENERAL.—A project meets the job
16 creation or retention objective set forth in subsection
17 (a)(1) if the project creates or retains one job for
18 every $65,000 guaranteed by the Administrator, ex-
19 cept that the amount shall be $100,000 in the case
20 of a project of a small manufacturer.
21 "(2) EXCEPTIONS.—
22 "(A) Paragraph (1) shall not apply to a
23 project for which eligibility is based on the ob-
24 jectives set forth in subsection (a)(2) or (a)(3)
25 if the certified development company's portfolio

1 of outstanding debentures creates or retains one
2 job for every $65,000 guaranteed by the Ad-
3 ministrator.
4 "(B) For projects in Alaska, Hawaii,
5 State-designated enterprise zones, empower-
6 ment zones, enterprise communities, labor sur-
7 plus areas designated by the Administrator, the
8 certified development company's portfolio may
9 average not more than $75,000 per job created
10 or retained.
11 "(C) Loans for projects of small manufac-
12 turers shall be excluded from the calculations in
13 subparagraphs (A) and (B).
14 "(c) COMBINATION OF CERTAIN GOALS.—A small
15 business concern that is unconditionally owned by more
16 than 1 individual, or a corporation, the stock of which is
17 owned by more than 1 individual, shall be deemed to have
18 achieved a goal under subsection (a)(3) if a combined own-
19 ership share of not less than 51 percent is held by individ-
20 uals who are in 1 of, or a combination of, the groups de-
21 scribed in subparagraphs (C) or (E) of subsection (a)(1).
22 "(d) COMPOSITION OF THE PROJECT.—
23 "(1) IN GENERAL.—The projects described in
24 this section shall include, but not be limited to, plant
25 acquisition, construction, conversion, expansion (in-

1 cluding the acquisition of land), equipment and re-
2 lated project costs, or to acquire the stock of a cor-
3 poration (as long as the value of the loan for the ac-
4 quisition of the stock does not exceed the fixed asset
5 value attributable to such assets as would be eligible
6 for financing under subsection (a).

7 "(2) DEBT REFINANCING.—Any financing ap-
8 proved under this title may include a limited amount
9 of debt refinancing if the project involves the expan-
10 sion of a small business concern.

11 "(3) LIMITATION.—The amount of the existing
12 indebtedness may be refinanced and added to the ex-
13 pansion cost if—

14 "(A) the existing indebtedness does not ex-
15 ceed 50 percent of the project cost of the ex-
16 pansion;

17 "(B) the proceeds of the indebtedness were
18 used to acquire land, including a building situ-
19 ated thereon, to construct a building thereon, or
20 to purchase equipment;

21 "(C) the existing indebtedness is
22 collateralized by fixed assets;

23 "(D) the existing indebtedness was in-
24 curred for the benefit of the small business con-
25 cern;

"(E) the financing under this title will be used only for refinancing existing indebtedness or costs relating to the project financed under this title;

"(F) the financing under this title will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

"(G) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

"(H) the financing under this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

"(e) DEFINITION.—For purposes of subparagraphs (J) and (K) of subsection (a)(1), the terms included have the meanings given those terms under the Leadership in Energy and Environmental Design (more generally referred to as LEED) standard for green building certification, as determined by the Administrator through regulation to be published in the Code of Federal Regulation.".

SEC. 208. PROJECT FUNDING REQUIREMENTS.

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

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

2 "(a) IN GENERAL.—Any project described in section
3 507 must meet the funding standards set forth in this sec-
4 tion.

5 "(b) SIZE OF DEBENTURE.—The Administrator shall
6 only be permitted to guarantee debenture issued by a cer-
7 tified development company up to the following amounts:

8 "(1) $3,000,000 for any project of a small busi-
9 ness concern.

10 "(2) $4,000,000 for any project that meets the
11 public policy goals set forth in section 507(a)(3).

12 "(3) $4,000,000 for any project to be located in
13 a low-income community as that term is described in
14 section 507(a)(3)(A).

15 "(4) $8,000,000 for each project of a small
16 manufacturer.

17 "(5) $8,000,000 for each project that reduces
18 the borrower's energy consumption by at least 10
19 percent.

20 "(6) $8,000,000 for each project that generates
21 renewable energy or renewable fuels, such as, but
22 not limited to, biodiesel or ethanol production.

23 "(7) $10,000,000 for each project for a small
24 business concern that constitutes a major source of
25 employment as that term is used in section

1 7(b)(3)(E) of the Small Business Act (15 U.S.C.
2 636(b)(3)(E)).
3 "(c) FUNDING FROM SOURCES OTHER THAN DE-
4 BENTURES ISSUED BY CERTIFIED DEVELOPMENT COM-
5 PANIES.—
6 "(1) IN GENERAL.—Any project financed pur-
7 suant to this title must have the following contribu-
8 tions from parties other than the debenture issued
9 by the certified development company:
10 "(A) FUNDING FROM INSTITUTIONS.—
11 "(i) If a small business concern pro-
12 vides—
13 "(I) the minimum contribution
14 required by subparagraph (B) not less
15 than 50 percent of the total cost of
16 any project financed shall come from
17 State or local governments, banks or
18 other financial institutions, or founda-
19 tions or other not-for-profit institu-
20 tions; and
21 "(II) more than the minimum
22 contribution required under subpara-
23 graph (B), any excess contribution
24 may be used to reduce the amount re-
25 quired from institutions in described

1 in subclause (I), except that the
2 amount provided by such institution
3 may not be reduced to an amount
4 that is less than the amount of the
5 loan made by the Administrator.
6 "(B) FUNDING FROM SMALL BUSINESS
7 CONCERNS.—The small business concern (or its
8 owners, stockholders, or affiliates) that will
9 have a project financed pursuant to this title
10 shall provide—
11 "(i) at least 15 percent of the total
12 cost of the project financed if the small
13 business concern has been in operation for
14 a period of 2 years or less;
15 "(ii) at least 15 percent of the total
16 cost of the project financed if the project
17 involves construction of a limited or single
18 purposed building or structure;
19 "(iii) at least 20 percent of the total
20 cost of the project financed if the project
21 involves both of the conditions in clauses
22 (i) or (ii); or
23 "(iv) at least 10 percent of the total
24 cost of the project financed and not cov-
25 ered by clauses (i), (ii), or (iii), at the dis-

1 cretion of the certified development com-
2 pany.
3 "(2) SELLER FINANCING.—Seller-provided fi-
4 nancing may be used to meet the requirements of
5 paragraph (1)(B), if the seller subordinates the in-
6 terest of the seller in the property to the debenture
7 guaranteed by the Administrator.
8 "(3) COLLATERALIZATION.—
9 "(A) IN GENERAL.—The collateral pro-
10 vided by the small business concern shall gen-
11 erally include a subordinate lien position on the
12 property being financed under this title, and is
13 only one of the factors to be evaluated in the
14 credit determination. Additional collateral shall
15 be required only if the Administrator deter-
16 mines, on a case-by-case basis, that additional
17 security is necessary to protect the interest of
18 the Government.
19 "(B) APPRAISALS.—With respect to com-
20 mercial real property provided by the small
21 business concern as collateral, an appraisal of
22 the property by a State licensed or certified ap-
23 praiser—
24 "(i) shall be required by the Adminis-
25 trator before disbursement of the loan if

1 the estimated value of that property is
2 more than $400,000; or
3 "(ii) may be required by the Adminis-
4 trator or the lender before disbursement of
5 the loan if the estimated value of that
6 property is $400,000 or less, and such ap-
7 praisal is necessary for appropriate evalua-
8 tion of creditworthiness.
9 "(C) ADJUSTMENT.—The Administrator
10 shall periodically adjust the amount under sub-
11 paragraph (B) to account for the effects of in-
12 flation, provided that no such adjustment shall
13 be less than $50,000.
14 "(4) LIMITATION ON LEASING.—
15 "(A) If the project funded under this sec-
16 tion includes the acquisition of a facility or the
17 construction of a new facility, the small busi-
18 ness concern—
19 "(i) shall permanently occupy and use
20 not less than 50 percent of the project
21 property; and
22 "(ii) may, on a temporary or perma-
23 nent basis, lease to others not more than
24 50 percent of the project property.

1 "(B) For purposes of this paragraph, the
2 term 'project property' means—
3 "(i) the building and any exterior
4 areas used in connection with the building
5 or a part thereof and includes all of the
6 parcels of real property included in the
7 project in the aggregate; and
8 "(ii) occupancy and use of the project
9 property by the operating company shall be
10 deemed to be occupancy and used by the
11 small business concern that received fund-
12 ing under this section.
13 "(d) REGULATIONS.—(1) The Administrator shall
14 promulgate regulations, after notice and comment, rules
15 to implement the provisions of this section within 60 days
16 after enactment of the Job Creation and Economic Devel-
17 opment Through CDC Modernization Act of 2009. The
18 Administrator may limit the comment period to 15 days
19 to meet this deadline.
20 "(2) If the Administrator fails to promulgate the reg-
21 ulations as provided in paragraph (1), all leases entered
22 into, absent clear and convincing evidence of fraud, shall
23 be deemed to be in compliance with the limitations on leas-
24 ing in this subparagraph for purposes of honoring the

1 guarantee on the debenture issued by the certified develop-
2 ment company.

3 "(3) Any regulation of the Administrator or interpre-
4 tation of any regulation by the Administrator or the Office
5 of Hearings and Appeals that restricts the use of proceeds
6 for leased projects that was in effect on the date of enact-
7 ment of the Job Creation and Economic Development
8 Through CDC Modernization Act of 2009 shall hereby
9 cease to apply.

10 "(4) Any interpretation of the leasing provisions
11 issued by the Administrator prior to the issuance of regu-
12 lations required by paragraph (1) shall be considered null
13 and void and may be not be used in any court of com-
14 petent jurisdiction, be it Federal or State court, to dis-
15 honor any guarantee of a debenture issued by a certified
16 development company for a project funded pursuant to
17 this section.

18 "(e) OWNERSHIP CALCULATION.—Ownership re-
19 quirements to determine the eligibility of a small business
20 concern that applies for funding under this title shall be
21 determined without regard to any ownership interest of
22 a spouse arising solely from the application of the commu-
23 nity property laws of a State for purposes of determining
24 marital interests.

1 "(f) COMBINATION FINANCING.—Financing under
2 this title may be provided to a borrower in the maximum
3 amount provided in this section, and a loan guarantee
4 under section 7(a) of the Small Business Act (15 U.S.C.
5 636(a)) may be provided to the same borrower in the max-
6 imum amount provided in section 7(a)(3)(A) of such Act,
7 to the extent that the borrower otherwise qualifies for such
8 assistance.

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

11 "(1) SIZE STANDARDS.—For purposes of deter-
12 mining the size of small business concern seeking
13 funds for a project described in subsection (b)(3),
14 the size standard promulgated by the Administrator
15 in section 121.201 of title 13, Code of Federal Reg-
16 ulations as in effect on January, 1, 2009, or any
17 successor regulation, shall be increased by 25 per-
18 cent.

19 "(2) PERSONAL LIQUIDITY.—

20 "(A) IN GENERAL.—The amount of per-
21 sonal resources of an owner for a project de-
22 scribed in subsection (b)(3) that are excluded
23 from the amount required to reduce the portion
24 of the project funded by the Administrator shall
25 be not less than 25 percent more than that re-

1 quired for funding of any other project de-
2 scribed in subsection (b).
3 "(B) DEFINITION.—For purposes of sub-
4 paragraph (A), the term 'owner' means any
5 person that owns not less than 20 percent of
6 the equity or has not less than 20 percent of
7 the voting rights (in the case of a small busi-
8 ness organized as a partnership) of a small
9 business concern seeking funds under this sec-
10 tion.
11 "(h) APPLICABILITY OF CREDIT ELSEWHERE AND
12 PERSONAL RESOURCES REGULATIONS.—Except as pro-
13 vided in subsection (c)(1)(B) with respect to project fund-
14 ing, the Administrator shall be prohibited from applying
15 the regulations set forth in section 120.101 and 120.102
16 of title 13, Code of Federal Regulation as in effect on Jan-
17 uary 1, 200,9 or any successor regulation that applies a
18 credit elsewhere or personal resources test to any applica-
19 tion for a loan under this title pending or filed after the
20 date of enactment of the Job Creation and Economic De-
21 velopment through CDC Modernization Act of 2009.".
22 **SEC. 209. PRIVATE DEBENTURE SALES AND POOLING OF**
23 **DEBENTURES.**
24 Section 509 of the Small Business Investment Act
25 of 1958 (15 U.S.C. 697f) is amended to read as follows:

1 **"SEC. 509. PRIVATE DEBENTURE SALES AND POOLING OF**
2 **DEBENTURES.**

3 "(a) PRIVATE DEBENTURE SALES.—Notwith-
4 standing any other law, rule, or regulation, the Adminis-
5 trator shall sell to investors, either publicly or by private
6 placement, debentures issued by certified development
7 companies pursuant to this title for the full amount of the
8 program levels authorized in each fiscal year and if there
9 is not authorization of a level, the amount of debentures
10 actually issued.

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

14 "(1) any obligation the payment of principal or
15 interest on which at any time has been guaranteed
16 in whole or in part under this title and which is
17 being sold pursuant to the provisions of this section;

18 "(2) any obligation which is an interest in any
19 obligation which is an interest in any obligation de-
20 scribed in paragraph (1); or

21 "(3) any obligation which is secured by, or sub-
22 stantially all of the value of which is attributable to,
23 any obligation described in paragraph (1) or (2).

24 "(c) POOLING OF DEBENTURES.—

25 "(1) IN GENERAL.—The Administrator is au-
26 thorized to issue trust certificates representing own-

1 ership of all or a fractional part of debentures issued
2 by certified development companies and guaranteed
3 under this title if such trust certificates are based on
4 and backed by a trust or pool approved by the Ad-
5 ministrator and composed solely of guaranteed de-
6 bentures.

7 "(2) GUARANTEE OF TRUST CERTIFICATES.—
8 The Administrator is authorized, upon such terms
9 and conditions as are deemed appropriate, to guar-
10 antee the timely payment of the principal of and in-
11 terest on trust certificates issued by the Adminis-
12 trator or its agent for purposes of this section. Such
13 guarantee shall be limited to the extent of principal
14 and interest on the guaranteed debentures which
15 compose the trust or pool. In the event that a deben-
16 ture in such trust or pool is prepaid, either volun-
17 tarily or in the event of default, the guarantee of
18 timely payment of principal and interest on the trust
19 certificates shall be reduced in proportion to the
20 amount of principal and interest such prepaid deben-
21 ture represents in the trust or pool. Interest on pre-
22 paid or defaulted debentures shall accrue and be
23 guaranteed by the Administrator only through the
24 date of payment on the guarantee. During the term
25 of the trust certificate, it may be called for redemp-

1 tion due to prepayment or default of all debentures
2 constituting the pool.
3 "(3) FULL FAITH AND CREDIT.—The full faith
4 and credit of the United States is pledged to the
5 payment of all amounts which may be required to be
6 paid under any guarantee of such trust certificates
7 issued by the Administrator or its agent pursuant to
8 this section.
9 "(4) PROHIBITION ON GUARANTEE FEE FOR
10 POOLS.—The Administrator shall not collect any fee
11 for any guarantee under this section: provided, that
12 nothing herein shall preclude any agent of the Ad-
13 ministrator from collecting a fee approved by the
14 Administrator for the functions performed in para-
15 graph (6)(F).
16 "(5) SUBROGATION.—
17 "(A) IN GENERAL.—In the event the Ad-
18 ministrator pays a claim under a guarantee
19 issued under this section, it shall be subrogated
20 fully to the rights satisfied by such payment.
21 "(B) ADMINISTRATOR EXERCISE OF
22 RIGHTS.—No Federal, State, or local law shall
23 preclude or limit the exercise by the Adminis-
24 trator of its ownership rights in the debentures

1 constituting the trust or pool against which the
2 trust certificates are issued.
3 "(6) CENTRAL REGISTRATION.—
4 "(A) IN GENERAL.—The Administrator
5 shall provide for a central registration of all
6 trust certificates sold pursuant to this section.
7 "(B) CONTRACT.—The Administrator shall
8 contract with an agent to carry out on behalf
9 of the Administrator the central registration
10 functions of this section and the issuance of
11 trust certificates to facilitate pooling.
12 "(C) BOND.—The Administrator shall re-
13 quire the contractor to provide a fidelity bond
14 or insurance in such amounts as is deemed nec-
15 essary to fully protect the interests of the Gov-
16 ernment.
17 "(D) DISCLOSURE REQUIREMENTS.—The
18 Administrator shall, prior to any sale, require
19 the seller to disclose to a purchaser of a trust
20 certificate issued pursuant to this section, infor-
21 mation on terms, conditions, and yield of such
22 instruments.
23 "(E) AUTHORITY TO REGULATE.—The Ad-
24 ministrator shall have the authority to regulate

1 brokers and dealers in trust certificates sold
2 pursuant to this section.
3 "(F) BOOK ENTRY PERMITTED.—Nothing
4 in this paragraph shall prohibit the utilization
5 of a book-entry or other electronic form of reg-
6 istration for trust certificates.".

7 **SEC. 210. FORECLOSURE AND LIQUIDATION OF LOANS.**

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

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

11 "(a) DELEGATION OF AUTHORITY.—In accordance
12 with this section, the Administrator shall delegate to any
13 certified development company that meets the eligibility
14 requirements of subsection (b)(1), the authority to fore-
15 close and liquidate, or to otherwise treat in accordance
16 with this section, defaulted loans in its portfolio that are
17 funded with the proceeds of debentures guaranteed by the
18 Administrator pursuant to this title.
19 "(b) ELIGIBILITY FOR DELEGATION.—
20 "(1) REQUIREMENTS.—A certified development
21 company shall be eligible for a delegation of author-
22 ity under subsection (a) if—
23 "(A) the certified development company—
24 "(i) has participated in the loan liq-
25 uidation pilot program established by the

1 Small Business Programs Improvement
2 Act of 1996 (15 U.S.C. 695 note), before
3 the enactment of the Job Creation and
4 Economic Development Through CDC
5 Modernization Act of 2009;
6 "(ii) is an accredited or premier cer-
7 tified development company; or
8 "(iii) during the 3 fiscal years imme-
9 diately prior to seeking such a delegation,
10 has made an average of not less than 10
11 loans per year that are funded with the
12 proceeds of debentures guaranteed under
13 this title; and
14 "(B) the certified development company—
15 "(i) has one or more employees—
16 "(I) with not less than 2 years of
17 substantive, decisionmaking experi-
18 ence in administering the liquidation
19 and workout of problem loans secured
20 in a manner substantially similar to
21 loans funded with the proceeds of de-
22 bentures guaranteed under this title;
23 and
24 "(II) who have completed a train-
25 ing program on loan liquidation devel-

1 oped by the Administrator in conjunc-
2 tion with a certified development com-
3 pany that meet the requirements of
4 this paragraph; or
5 "(ii) submits to the Administrator
6 documentation demonstrating that the
7 company has contracted with a qualified
8 third-party to perform any liquidation ac-
9 tivities and secures the approval of the
10 contract by the Administrator with respect
11 to the qualifications of the contractor and
12 the terms and conditions of liquidation ac-
13 tivities.
14 "(2) CONFIRMATION.—On the request, the Ad-
15 ministrator shall examine the qualifications of any
16 certified development company described in sub-
17 section (a) to determine if such company is eligible
18 for the delegation of authority under this section. If
19 the Administrator determines that a company is not
20 eligible, the Administrator shall provide the com-
21 pany, in writing, with the reasons for such ineligi-
22 bility. The certified development company shall be
23 entitled to request delegated authority and the Ad-
24 ministrator shall review the request only to address
25 whether the certified development company has rec-

1 tified the reasons for the Administrator's original
2 determination of ineligibility.
3 "(c) SCOPE OF DELEGATED AUTHORITY.—
4 "(1) IN GENERAL.—Each certified development
5 company to which the Administrator delegates au-
6 thority under section (a) may with respect to any
7 loan described in subsection (a)—
8 "(A) perform all liquidation and fore-
9 closure functions, including the purchase in ac-
10 cordance with this subsection of any other in-
11 debtedness secured by the property securing the
12 loan, in a reasonable and sound manner accord-
13 ing to commercially accepted practices, pursu-
14 ant to a liquidation plan approved in advance
15 by the Administrator under paragraph (2)(A);
16 "(B) litigate any matter relating to the
17 performance of the functions described in sub-
18 paragraph (A), except that the Administrator
19 may—
20 "(i) defend or bring any claim if—
21 "(I) the outcome of the litigation
22 may adversely affect the Administra-
23 tor's management of the program es-
24 tablished under this title; or

"(II) the Administrator is entitled to legal remedies not available to a certified development company and such remedies will benefit either the Administrator or the certified development company; and

"(ii) oversee the conduct of any such litigation; and

"(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administrator under paragraph (2)(C).

"(2) ADMINISTRATOR APPROVAL OF PLANS.—

"(A) CERTIFIED DEVELOPMENT COMPANY SUBMISSION OF PLANS.—Before carrying out functions described in paragraph (1)(A) or (1)(C), the certified development company shall submit to the Administrator a proposed liquidation plan, any proposal for the Administrator to the purchase of any other indebtedness secured by the property securing a defaulted loan, or a workout plan or any combination thereof.

1 "(B) ADMINISTRATOR APPROVAL PROCE-
2 DURES.—
3 "(i) TIMING.—Not late than 15 busi-
4 ness days after the plans described in sub-
5 paragraph (A) are received by the Admin-
6 istrator, the Administrator shall approve or
7 reject the plan.
8 "(ii) NOTICE OF NO DECISION.—With
9 respect to any plan that cannot be ap-
10 proved or denied within the 15-day period
11 required by clause (i), the Administrator
12 shall within such period provide in accord-
13 ance with subparagraph (E) notice to the
14 company that submitted the plan.
15 "(C) ROUTINE ACTIONS.—In carrying out
16 the functions described in paragraph (1)(A), a
17 certified development company may undertake
18 routine actions not addressed in a liquidation or
19 workout plan without obtaining additional ap-
20 proval from the Administrator.
21 "(D) COMPROMISE OF INDEBTEDNESS.—
22 In carrying out functions described in para-
23 graph (1)(A), a certified development company
24 may—

"(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

"(ii) pursuant to such offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administrator.

"(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administrator pursuant to subparagraph (B)(ii) shall—

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

"(ii) provide an estimate of the additional time needed for the Administrator to reach a decision on the request; and

"(iii) specify any additional information or documentation that the Administrator needs to make a decision but was not provided in the plan submitted by the certified development company.

"(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a certified development company shall take no action that would

1 result in an actual or apparent conflict of interest
2 between the company (or any employee of the com-
3 pany) and any third-party lender, associate of a
4 third-party lender, or any other person participating
5 in a liquidation, foreclosure, or loss mitigation ac-
6 tion.

7 "(d) SUSPENSION OR REVOCATION OF AUTHOR-
8 ITY.—

9 "(1) IN GENERAL.—The Administrator may re-
10 voke or suspend a delegation of authority under this
11 section to certified development company if the Ad-
12 ministrator determines that the company—

13 "(A) does not meet the requirements of
14 subsection (b)(1);

15 "(B) violated any applicable law or rule or
16 regulation of the Administrator that in the esti-
17 mation of the Administrator requires revoca-
18 tion; or

19 "(C) fails to comply with any reporting
20 that may be established by the Administrator
21 relating to the establishment of eligibility in
22 subsection (b)(1) or carrying out the functions
23 described in subsection (c)(1).

1 "(2) WRITTEN NOTICE.—The Administrator
2 shall provide in writing detailed reason why the dele-
3 gation of authority was suspended or revoked.
4 "(e) PARTICIPATION IN LIQUIDATION.—
5 "(1) IN GENERAL.—A certified development
6 company which elects not to apply for authority to
7 foreclose and liquidate defaulted loans under this
8 section, or which the Administrator determines to be
9 ineligible for such authority, shall contract with a
10 qualified third-party to perform foreclosure and liq-
11 uidation of defaulted loans in its portfolio.
12 "(A) CONTRACT APPROVAL.—The contract
13 entered into by the certified development com-
14 pany specified in paragraph (1) shall be contin-
15 gent upon approval by the Administrator with
16 respect to the qualifications of the contractor
17 and the terms and conditions of liquidation ac-
18 tivities. The Administrator shall not unreason-
19 ably withhold such approval.
20 "(B) NOTIFICATION OF REJECTION.—If
21 the Administrator rejects the contract, the Ad-
22 ministrator shall provide a notice to the cer-
23 tified development company, in writing, explain-
24 ing the reasons for such rejection within ten
25 business days after submission of the contract.

1 "(C) RESUBMITTAL.—The certified devel-
2 opment company shall be permitted to resubmit
3 the contract and the Administrator's review of
4 any such resubmittal shall be limited to
5 insufficiencies described in the notification of
6 rejection.

7 "(D) REGULATIONS.—The Administrator
8 shall promulgate regulations, after notice and
9 opportunity for comment, adopting standards
10 for the approval of qualified third-party con-
11 tractors within 90 days after the date of enact-
12 ment of the Job Creation and Economic Devel-
13 opment Through CDC Modernization Act of
14 2009.

15 "(E) FAILURE TO PROMULGATE REGULA-
16 TIONS.—If the Administrator fails to promul-
17 gate such regulations, any contract for liquida-
18 tion entered into by a certified development
19 company under this subsection shall be consid-
20 ered to valid for the purposes of this subsection
21 and subsection (f).

22 "(F) EFFECT OF ADMINISTRATOR'S PRO-
23 MULGATION OF REGULATIONS.—If the Adminis-
24 trator promulgates regulations after the dead-
25 line specified in subparagraph (D), those regu-

1 lations shall not have any retroactive applica-
2 tion with respect to contracts that are described
3 in subparagraph (E).
4 "(2) COMMENCEMENT.—This subsection shall
5 not require any certified development company to
6 liquidate defaulted loans until the Administrator im-
7 plements a system to compensate and reimburse cer-
8 tified development companies for liquidation of any
9 defaulted loans.
10 "(f) COMPENSATION AND REIMBURSEMENT.—
11 "(1) REIMBURSEMENT OF EXPENSES.—The
12 Administrator shall reimburse each certified develop-
13 ment company for all expenses paid by such com-
14 pany as part of the foreclosure and liquidation ac-
15 tivities taken to carry out this section, if the ex-
16 penses—
17 "(A) were—
18 "(i) approved in advance by the Ad-
19 ministrator, either specifically in a plan
20 submitted pursuant to subsection (c) or
21 generally, such as, but not limited to, ac-
22 tions approved by the Administrator in
23 regulations or other interpretative
24 issuances; or

1 "(ii) incurred by the development
2 company on an emergency basis without
3 prior approval from the Administrator, if
4 the Administrator determines that the ex-
5 penses were reasonable and appropriate;
6 and
7 "(B) are submitted by the certified devel-
8 opment company to the Administrator not later
9 than 3 years after the date the expense was in-
10 curred or the bill therefore is submitted to the
11 certified development company, whichever is
12 later.
13 "(2) ALTERNATIVE REIMBURSEMENT.—As an
14 alternative to the procedure in paragraph (1), a cer-
15 tified development company may elect to obtain re-
16 imbursement for all such expenses from the proceeds
17 of any collateral provided by the borrower that was
18 liquidated by the certified development company if
19 the expenses comply with the requirements of para-
20 graph (1). Within 6 months of the reimbursement,
21 the certified development company shall provide the
22 Administrator with the same information and docu-
23 mentation it would be required to submit to obtain
24 payment from the Administrator.

1 "(3) REGULATIONS.—The Administrator shall
2 promulgate regulations, after notice and comment to
3 carry out the provisions of paragraphs (1) and (2).
4 If the Administrator does not promulgate such regu-
5 lations within one year, certified development compa-
6 nies shall be authorized, notwithstanding the re-
7 quirements of subsection (e)(2), to liquidate de-
8 faulted loans and such costs and expenses incurred,
9 absent clear and convincing evidence of fraud, shall
10 be deemed to be approved.
11 "(4) COMPENSATION FOR RESULTS.—
12 "(A) DEVELOPMENT.—In regulations pro-
13 mulgated pursuant to paragraph (3), the Ad-
14 ministrator also shall develop a schedule of
15 compensation that provides monetary incentives
16 for certified development companies in order to
17 increase recoveries on defaulted loans.
18 "(B) CRITERIA.—The schedule shall—
19 "(i) be based on a percentage of the
20 net amount recovered, but shall not exceed
21 a maximum amount; and
22 "(ii) not apply to any foreclosure
23 which is conducted under a contract be-
24 tween a certified development company and

1 a qualified third party to perform the fore-
2 closure and liquidation.
3 "(C) PAYMENT.—The Administrator shall
4 transmit the compensation provided herein to
5 the development company from the proceeds of
6 liquidated collateral, unless he utilizes another
7 source for funds, within 30 days from the date
8 when the liquidation case has been closed and
9 documentation received.".

10 **SEC. 211. REPORTS AND REGULATIONS.**

11 Title V of the Small Business Investment Act of 1958
12 (15 U.S.C. 661 and following) is amended by adding at
13 the end the following:

14 **"SEC. 511. REPORTS.**

15 "(a) PREMIER CERTIFIED DEVELOPMENT COMPA-
16 NIES.—The Administrator shall report annually to the
17 Committee on Small Business of the House of Representa-
18 tives and the Committee on Small Business and Entrepre-
19 neurship of the Senate on the implementation of section
20 504. Each report shall include—
21 "(1) the number of premier certified develop-
22 ment companies;
23 "(2) the debenture volume of each premier cer-
24 tified development company;

1 "(3) a comparison of the loss rate for premier
2 certified development companies to the loss rate for
3 accredited or certified development companies; and
4 "(4) such other information as the Adminis-
5 trator deems appropriate.
6 "(b) REPORTS ON LIQUIDATION AND FORE-
7 CLOSURES.—
8 "(1) IN GENERAL.—Based on information pro-
9 vided by certified development companies and the
10 Administrator, the Administrator shall submit annu-
11 ally to the Committee on Small Business and Entre-
12 preneurship of the Senate and the Committee on
13 Small Business of the House of Representatives a
14 report on the results of delegation of authority under
15 section 510.
16 "(2) CONTENTS.—Each report submitted under
17 paragraph (1) shall include the following informa-
18 tion:
19 "(A) With respect to each loan foreclosed
20 or liquidated by a certified development com-
21 pany, or for which losses were otherwise miti-
22 gated by pursuant to a workout plan—
23 "(i) the total cost of the project fi-
24 nanced with the loan;

1 "(ii) the total original dollar amount
2 guaranteed by the Administration;
3 "(iii) the total dollar amount of the
4 loan at the time of liquidation, foreclosure,
5 or mitigation of loss;
6 "(iv) the total dollar losses resulting
7 from the liquidation, foreclosure, or mitiga-
8 tion of loss; and
9 "(v) the total recoveries resulting
10 from the liquidation, foreclosure, or mitiga-
11 tion of loss, both as a percentage of the
12 amount guaranteed and the total cost of
13 the project financed.
14 "(B) With respect to each certified devel-
15 opment company to which authority is dele-
16 gated under section 510, the totals of each of
17 the amounts described in clauses (i) through (v)
18 of subparagraph (A).
19 "(C) With respect to each certified devel-
20 opment company that contracts with a qualified
21 third-party contractor pursuant to section
22 510(e), the total of each of the amounts de-
23 scribed in clauses (i) through (v) of subpara-
24 graph (A).

1 "(D) With respect to all loans subject to
2 foreclosure, liquidation, or mitigation under sec-
3 tion 510, the totals of each of the amounts de-
4 scribed in clauses (i) through (v) of subpara-
5 graph (A).
6 "(E) A comparison between—
7 "(i) the information provided under
8 subparagraph (D) with respect to the 12-
9 month period preceding the date on which
10 the report is submitted; and
11 "(ii) the same information with re-
12 spect to loans foreclosed and liquidated, or
13 otherwise treated, by the Administrator
14 during the same period.
15 "(F) The number of times that the Admin-
16 istrator has failed to approve or reject a liq-
17 uidation plan, workout plan, request to pur-
18 chase indebtedness, or failed to approve a third-
19 party contractor under section 510, including
20 specific information regarding the reasons for
21 the Administrator's failure and any delays that
22 resulted.
23 "(c) REPORTS ON COMBINATION FINANCING.—
24 "(1) REPORTING REQUIREMENT.—Not later
25 than 90 days after the date of enactment of the Job

1 Creation and Economic Development Through CDC
2 Modernization Act of 2009, and annually thereafter,
3 the Administrator shall submit a report to the Com-
4 mittee on Small Business and Entrepreneurship of
5 the Senate and the Committee on Small Business of
6 the House of Representatives that—
7 "(A) includes the number of small business
8 concerns that have financing under both section
9 7(a) of the Small Business Act (15 U.S.C.
10 636(a)) and title V of the Small Business In-
11 vestment Act of 1958 (15 U.S.C. 695 et seq.)
12 during the year before the year of that report;
13 and
14 "(B) describes the total amount and gen-
15 eral performance of the financing described in
16 subparagraph (A).
17 "(d) REPORT ON OTHER ECONOMIC DEVELOPMENT
18 ACTIVITY.—The Administrator shall compile and submit
19 to Committee on Small Business of the House of Rep-
20 resentatives and the Committee on Small Business and
21 Entrepreneurship of the Senate on an annual basis, com-
22 mencing in the year that the Job Creation and Economic
23 Development Through CDC Modernization Act of 2009
24 was enacted, a report that describes the economic and
25 community development activities, other than loan making

1 under this title, of each certified development company
2 during the prior fiscal year. The Administrator may con-
3 tract with another party, including non-governmental enti-
4 ties, to collect information or otherwise assist in the prepa-
5 ration of the report required by this subsection.

6 **"SEC. 512. PROMULGATION OF REGULATIONS UNDER THIS**
7 **TITLE.**

8 "(a) DEADLINES FOR IMPLEMENTING REGULA-
9 TIONS.—Except as expressly provided elsewhere in the Job
10 Creation and Economic Development Through CDC Mod-
11 ernization Act of 2009, the Administrator shall promul-
12 gate regulations under this title, after providing notice and
13 the opportunity for comment, within 180 days after the
14 date of enactment of that Act.

15 "(b) NOTICE AND COMMENT REQUIREMENTS IN
16 GENERAL.—Except as otherwise provided elsewhere in
17 this title, the Administrator shall provide, after the date
18 of enactment of the Job Creation and Economic Develop-
19 ment Through CDC Modernization Act of 2009, notice of
20 any proposed change to a regulation implementing this
21 title V (whether in existence on the date of enactment of
22 the Job Creation and Economic Development Through
23 CDC Modernization Act of 2009 or subsequently adopt-
24 ed), publish such notification in the Federal Register, and
25 provide a comment period of not less than 60 days.".

1 **SEC. 212. PROGRAM NAME.**

2 Title V of the Small Business Investment Act is
3 amended by adding the following new section after section
4 512:

5 **"SEC. 513 PROGRAM NAME.**

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

9 "(b) MODIFICATION OF MATERIALS USED.—Within
10 60 days after the date of enactment of the Job Creation
11 and Economic Development Through CDC Modernization
12 Act of 2009, the Administrator shall modify all documents
13 and websites to conform to the name change made by this
14 section.".

15 # TITLE III—MISCELLANEOUS

16 **SEC. 301. TERMINATION OF PILOT PROGRAM REGULATION.**

17 (a) TERMINATION.—Section 120.3 of title 13, Code
18 of Federal Regulations, as in effect on January 1, 2009,
19 shall cease to have any force and effect as of the date
20 of enactment of this Act, and the Administrator is prohib-
21 ited from adopting a new regulation that authorizes the
22 Administrator to waive any regulation for the purpose of
23 conducting a pilot program unless such waiver is specifi-
24 cally granted by statute.

1 (b) EFFECT ON EXISTING PROGRAM.—Subsection
2 (a) shall have no effect on any pilot program currently
3 conducted by the Administrator.

4 (c) FUTURE PILOT PROGRAMS.—Any future pilot
5 program conducted under the Administrator's own initia-
6 tive or pursuant to statutory authority granted in the
7 Small Business Investment Act of 1958 or section 7 of
8 the Small Business Act must be implemented only after
9 notice in the Federal Register and the opportunity for
10 comment.

11 **SEC. 302. REPORT ON STANDARD OPERATING PROCE-**
12 **DURES.**

13 (a) REPORT.—The Administrator of the Small Busi-
14 ness Administration shall submit to the Committee on
15 Small Business of the House of Representatives and the
16 Committee on Small Business and Entrepreneurship of
17 the Senate a report within 180 days after enactment of
18 this Act identifying each "Standard Operating Procedure"
19 issued after January 1, 1996, that relates to the operation
20 of a development company (in any manner) under title V
21 of the Small Business Investment Act of 1958, that is still
22 in effect on the date of enactment of this Act, and the
23 regulation codified in title 13 of the Code of Federal Regu-
24 lations that authorizes the issuance of the Standard Oper-
25 ating Procedure and separately identifies the regulation

1 that the Standard Operating Procedure purports to inter-
2 pret.

3 (b) INAPPLICABILITY.—If the Administrator fails to
4 complete the report by the time specified in subsection (a),
5 the Administrator shall, unless there is clear and con-
6 vincing evidence of fraud, honor the terms and conditions
7 of any debenture to the entity that issued the debenture
8 pursuant to title V of the Small Business Investment Act
9 of 1958 without regard to whether the entity complied
10 with any of the Standard Operating Procedures described
11 in subsection (a) until such time as the Administrator sub-
12 mits the report required under subsection (a).

13 (c) DEFINITION.—For purposes of this section, the
14 term "Standard Operating Procedure" has the meaning
15 given that term in section 120.10 of title 13, Code of Fed-
16 eral Regulations as that was in effect on January 1, 2009,
17 and includes any reference to the acronym "SOP".

18 **SEC. 303. ALTERNATIVE SIZE STANDARD.**

19 (a) REVIEW AND STUDY.—

20 (1) IN GENERAL.—The Administrator of the
21 United States Small Business Administration shall
22 study and review the optional size standard set forth
23 in section 121.301(b) of title 13, Code of Federal
24 Regulations as was in effect on January 1, 2009, for
25 eligibility of a small business concern for financing

1 under title V of the Small Business Investment Act
2 of 1958.
3 (2) CONTENTS.—The review shall analyze
4 whether the alternative size standard includes the
5 business concerns defined in section 3(a)(1) of the
6 Small Business Act and what if any regulatory
7 changes are needed in the alternative size standard.
8 (3) SUBMISSION TO CONGRESS.—The Adminis-
9 trator shall submit its study and conclusions within
10 180 days after the date of enactment of the Job
11 Creation and Economic Development through CDC
12 Modernization Act of 2009 to the Committee on
13 Small Business and Entrepreneurship of the Senate
14 and the Committee on Small Business of the House
15 of Representatives.
16 (b) ISSUANCE OF REGULATIONS.—Any changes in
17 the optional size standard described in subsection (a)(1)
18 shall be promulgated within 180 days of the submission
19 of the report to committes referred to in paragraph (3)
20 of subsection (a).
21 (c) INTERIM ALTERNATIVE SIZE STANDARD.—Until
22 the Administrator promulgates regulations either re-
23 adopting the size standard referred to in subsection (a)(1)
24 or adopts a new alternative size standard, the alternative
25 size standard shall be a maximum tangible net worth of

1 not more than $15,000,000 and an average net income
2 after the payment of Federal taxes (but excluding any car-
3 ryover losses) for the preceding two fiscal years not more
4 than $5,000,000.

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111TH CONGRESS
1ST SESSION

H. R. 3737

To amend the Small Business Act to improve the Microloan Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. ELLSWORTH introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To amend the Small Business Act to improve the Microloan Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Microlending Expansion Act of 2009".

SEC. 2. MICROLOAN CREDIT BUILDING INITIATIVE.

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

"(14) CREDIT REPORTING INFORMATION.—The Administrator shall establish a process, for use by

1 an intermediary making a loan to a borrower under
2 this subsection, under which the intermediary shall
3 provide to the major credit reporting agencies the in-
4 formation about the borrower, both positive and neg-
5 ative, that is relevant to credit reporting, such as the
6 payment activity of the borrower on the loan. Such
7 process shall allow an intermediary the option of
8 providing information to the major credit reporting
9 agencies through the Administration or independ-
10 ently.".

11 **SEC. 3. FLEXIBLE CREDIT TERMS.**

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

20 **SEC. 4. INCREASED PROGRAM PARTICIPATION.**

21 Section 7(m)(2) of the Small Business Act (15
22 U.S.C. 636(m)(2)) is amended—
23 (1) in subparagraph (A) by striking "paragraph
24 (10)" and inserting "paragraph (11)"; and

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

SEC. 5. INCREASED LIMIT ON INTERMEDIARY BORROWING.

Section 7(m)(3)(C) of the Small Business Act (15 U.S.C. 636(m)(3)(C)) is amended—

(1) by striking "$750,000" and inserting "$1,000,000";

(2) by striking "$3,500,000" and inserting "$7,000,000"; and

(3) by adding at the end the following: "The Administrator may treat the amount of $7,000,000 in this subparagraph as if such amount is $10,000,000 if the Administrator determines, with respect to an intermediary, that such treatment is appropriate.".

SEC. 6. EXPANDED BORROWER EDUCATION ASSISTANCE.

Section 7(m)(4)(E) of the Small Business Act (15 U.S.C. 636(m)(4)(E)) is amended—

(1) in clause (i) by striking "25 percent" and inserting "35 percent"; and

(2) in clause (ii) by striking "25 percent" and inserting "35 percent".

SEC. 7. INTEREST RATES AND LOAN SIZE.

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

(1) in paragraph (3)(F)(iii) by striking "$7,500" and inserting "$10,000";

1 (2) in paragraph (6)(C)(i) by striking "$7,500"
2 and inserting "$10,000"; and
3 (3) in paragraph (6)(C)(ii) by striking
4 "$7,500" and inserting "$10,000".

5 **SEC. 8. REPORTING REQUIREMENT.**

6 Section 7(m) of the Small Business Act (15 U.S.C.
7 636(m)), as amended by this Act, is further amended by
8 adding at the end the following:
9 "(15) REPORTING REQUIREMENT.—Not later
10 than 90 days after the end of each fiscal year, the
11 Administrator shall submit to the Committee on
12 Small Business of the House of Representatives and
13 the Committee on Small Business and Entrepre-
14 neurship of the Senate a report that includes, with
15 respect to such fiscal year of the microloan program,
16 the following:
17 "(A) The names and locations of each
18 intermediary that received funds to make
19 microloans or provide marketing, management,
20 and technical assistance.
21 "(B) The amounts of each loan and each
22 grant provided to each such intermediary in
23 such fiscal year and in prior fiscal years.

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

"(iii) Veteran entrepreneurs and business owners.

"(iv) Disabled entrepreneurs and business owners.

"(v) Minority entrepreneurs and business owners.

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

"(G) The repayment history of each such intermediary.

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

SEC. 9. SURPLUS INTEREST RATE SUBSIDY FOR BUSINESSES.

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

"(16) INTEREST ASSISTANCE.—

"(A) IN GENERAL.—The Administrator is authorized to use amounts determined unlikely to be expended under subparagraph (B) to assist borrowers that receive a microloan under

this subsection to reduce the interest paid with respect to such microloan.

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

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

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

"(f) FISCAL YEARS 2010 AND 2011.—

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

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

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

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

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111TH CONGRESS
1ST SESSION

H. R. 3740

To amend the Small Business Investment Act of 1958 with respect to small business investment companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. LUETKEMEYER introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend the Small Business Investment Act of 1958 with respect to small business investment companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Investment Company Modernization Act of 2009".

SEC. 2. QUALIFIED NONPRIVATE FUNDS.

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

1 **SEC. 3. LICENSES FOR EXPERIENCED APPLICANTS.**

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

5 "(d) LICENSES FOR EXPERIENCED APPLICANTS.—

6 "(1) IN GENERAL.—Notwithstanding any other
7 provision of this section, not later than 60 days after
8 the initial receipt by the Administrator of any re-
9 quest (which shall be deemed to be the application)
10 for a license to operate as a small business invest-
11 ment company under this Act, the Administrator
12 shall approve the request and issue such license if
13 each of the following requirements is satisfied—

14 "(A) At least 50 percent of the principal
15 managers of the applicant consist of at least
16 two-thirds of the principal managers of a small
17 business investment company that has been li-
18 censed under this Act.

19 "(B) The licensed small business invest-
20 ment company specified under subparagraph
21 (A) has operated under such license for at least
22 3 years prior to the receipt specified in para-
23 graph (1).

24 "(C) The licensed small business invest-
25 ment company specified under subparagraph
26 (a)—

"(i) either has invested at least 70 percent of its private capital and drawn at least 50 percent of its projected leverage at time of its initial licensure or has invested and expensed or reserved for investment and expenses or some combination of both at least 70 percent of its private capital in the one-year period prior to the date on which the application referred to in paragraph (1) was received by the Administrator;

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

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

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

"(i) A certification, in the form prescribed by the Administrator, that such applicant satisfies the requirements of this subsection and that all information con-

1 tained in the application is true and com-
2 plete.
3 "(ii) A copy of the organization docu-
4 ments of the applicant.
5 "(iii) A copy of the operating plan of
6 the applicant demonstrating that at least
7 50 percent of the amount of the planned
8 investments of the applicant will be in the
9 same or substantially similar investment
10 stage and use the same or substantially
11 similar type of investment instruments as
12 the investments of the licensed small busi-
13 ness investment company specified under
14 subparagraph (A).
15 "(iv) A certification, in a form pre-
16 scribed by the Administrator, that the ap-
17 plicant satisfies the requirements of sub-
18 sections (a) and (c) of section 302 of this
19 Act.
20 "(E) The applicant is in good standing as
21 set forth in paragraph (2).
22 "(F) The applicant pays all fees prescribed
23 by the Administrator under subsection (e).
24 "(2) GOOD STANDING.—For purposes of this
25 subsection, an applicant is in good standing if—

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

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

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

"(3) LIMITATION.—

1 "(A) IN GENERAL.—The Administrator
2 may remove an application from the approval
3 process under this subsection if the Adminis-
4 trator determines based on evidence in the
5 agency record that the approval of the license
6 would present an unacceptable risk to the gov-
7 ernment of United States.
8 "(B) IN WRITING.—Such determination
9 shall be made in writing and provided to the
10 applicant no later than 10 calendar days after
11 such determination is made. Failure to provide
12 the applicant shall be deemed to be a perma-
13 nent waiver of the Administrator's authority to
14 remove an application pursuant to this sub-
15 section.
16 "(C) NON-DELEGABILITY.—The Adminis-
17 trator may rely on agency personnel to collect
18 data or other material relevant to establishing
19 a record, but the decision to remove the appli-
20 cation may not be delegated by the Adminis-
21 trator to any subordinate personnel in the agen-
22 cy.
23 "(4) NOTICE AND OPPORTUNITY TO CURE NON-
24 CONFORMANCE.—

1 "(A) NOTICE OF NON-CONFORMANCE.—
2 Except for a determination made pursuant to
3 paragraph (3), the Administrator shall provide
4 an applicant described in paragraph (1) within
5 30 days after receipt of the application a writ-
6 ten notice and description of any nonconform-
7 ance with any requirement of this subsection
8 based on evidence in the agency record.
9 "(B) OPPORTUNITY TO CURE.—The appli-
10 cant shall have 30 days following the receipt of
11 nonconformance or the receipt of removal as set
12 forth in paragraph (3) to cure such non-
13 conformance.
14 "(C) FAILURE TO PROVIDE NOTICE.—Fail-
15 ure to provide the notice within the limit set
16 forth in subparagraph (A) shall be deemed to
17 be acceptance by the Administrator of the ap-
18 plicant's conformance with the requirements of
19 this subsection.
20 "(5) BACKGROUND REVIEWS.—The Adminis-
21 trator shall ensure that a timely background check
22 of the principal managers of each applicant is com-
23 pleted with respect to paragraphs (2)(B) and (2)(C).
24 "(6) FEES.—The Administrator may charge an
25 applicant additional fees for carrying out the back-

1 ground reviews mandated by paragraph (5). Such
2 fees shall be limited to the cost of the review up to
3 a limit of $10,000.

4 "(7) EFFECT OF NON-QUALIFICATION.—The
5 failure of an applicant to qualify for expedited licen-
6 sure under this subsection shall have no effect on an
7 existing license or the ability for the applicant or
8 any of its individual managers to apply for or receive
9 a license to operate a small business investment
10 company under the procedures established elsewhere
11 in this Act.

12 "(8) REGULATIONS.—The Administrator shall
13 develop forms and promulgate regulations to imple-
14 ment this subsection after providing an opportunity
15 for notice and comment. Regulations promulgated
16 pursuant to this paragraph shall be published in the
17 Code of Federal Regulations.".

18 **SEC. 4. MAXIMUM LEVERAGE.**

19 (a) MAXIMUM LEVERAGE.—Section 303(b)(2) of the
20 Small Business Investment Act of 1958 (15 U.S.C.
21 683(b)(2)) is amended by striking so much of paragraph
22 (2) as precedes subparagraph (C) and inserting the fol-
23 lowing:

24 "(2) MAXIMUM LEVERAGE.—

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

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

"(II) $150,000,000.

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

"(I) the first one-third of private capital to 300 percent;

"(II) the second one-third of private capital to 200 percent; and

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

"(iii) Notwithstanding clause (i), in the case of any company operating as a business development company (as such term is defined under section (2)(a)(48) of the Investment Company Act of 1940) or a majority-owned

1 subsidiary of such a company that is in good
2 standing without the imposition of additional
3 regulatory requirements, the maximum amount
4 of outstanding leverage made available to such
5 company shall be $250,000,000.
6 "(B) MULTIPLE LICENSEES UNDER COM-
7 MON CONTROL.—The maximum amount of out-
8 standing leverage made available to two or more
9 companies licensed under section 301(c) of this
10 Act that are commonly controlled (as deter-
11 mined by the Administrator) and not under
12 capital impairment may not exceed
13 $350,000,000.".
14 (b) REGULATIONS.—Section 303(b)(2) of the Small
15 Business Investment Act of 1958 (15 U.S.C. 683(b)(2))
16 is amended by adding a new subparagraph (E) at the end
17 to read as follows:
18 "(E) REGULATIONS.—The Administrator
19 shall promulgate regulations, after notice and
20 opportunity for comment, establishing quantifi-
21 able objective criteria under which a licensee's
22 private capital in its entirety may be leveraged
23 up to 300 percent. Such regulations shall be
24 published in the Code of Federal Regulations.".

1 (c) INVESTMENTS IN LOW-INCOME GEOGRAPHIC
2 AREAS.—Section 303(b)(2)(C) of the Small Business In-
3 vestment Act of 1958 (15 U.S.C. 683(b)(2)(C)) is amend-
4 ed by striking "$250,000,000" in clause (ii)(II) and in-
5 serting "$400,000,000".

6 **SEC. 5. LONG-TERM LOANS TO SMALL BUSINESS CON-**
7 **CERNS.**

8 (a) MAXIMUM RATE OF INTEREST.—Section 305(c)
9 of the Small Business Investment Act of 1958 (15 U.S.C.
10 685(c)) is amended by adding the following at the end
11 thereof:

12 "In addition to the foregoing, with respect to a loan
13 made, or debt with equity features acquired, under this
14 section, a company may not charge an interest rate that
15 exceeds the yield of 10-year Treasury note plus 16 per-
16 centage points per annum on the date of initiating the
17 loan or debt security except that a company may charge
18 up to an additional 7 percent more than the interest rate
19 set forth in the loan or debt security in the event of a
20 default. For purposes of this subsection a default means
21 the occurrence of any of the following:

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

23 "(2) Failure to provide information required
24 under the applicable financing documents.

1 "(3) Failure to observe any material term, cov-
2 enant, or other agreement contained in the applica-
3 ble financing documents.
4 "(4) A representation, warranty, certification,
5 or statement of fact made by or on behalf of a bor-
6 rower in any applicable financing document or in
7 any document delivered in connection therewith, that
8 was materially incorrect or misleading when made.
9 "(5) Any material event of default specified in
10 the applicable financing documents.".

11 **SEC. 6. SMALL BUSINESS CONCERNS OWNED AND CON-**
12 **TROLLED BY VETERANS.**

13 Section 303(b)(2)(C) of the Small Business Invest-
14 ment Act of 1958 (15 U.S.C. 683(b)(2)(C)) is amended
15 as follows:
16 (1) In the heading, by inserting after "AREAS"
17 the following: "AND VETERANS".
18 (2) In clause (i), by inserting after "351)" the
19 following: "or in a small business concern owned and
20 controlled veterans (as such term is defined in sec-
21 tion 3(q)(3) of the Small Business Act)".
22 (3) In clause (iii), by inserting after "351)" the
23 following: "or in small business concerns owned and
24 controlled by veterans (as such is defined in section
25 3(q)(3) of the Small Business Act)".

1 **SEC. 7. ADDITIONAL AUTHORITY.**

2 Section 305 of the Small Business Investment Act
3 of 1958 (15 U.S.C. 685) is amended by adding at the end
4 of the following:

5 "(g) A company may require a small business concern
6 to accept reasonable and customary minimum prepayment
7 amounts and notices of prepayment.".

8 **SEC. 8. INVESTMENT IN CERTAIN PASSIVE ENTITIES.**

9 Part A of title III of the Small Business Investment
10 Act of 1958 (15 U.S.C. 661 and following) is amended
11 by adding at the end the following:

12 **"SEC. 321. INVESTMENT IN CERTAIN PASSIVE ENTITIES.**

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

1 **SEC. 9. INVESTMENT IN SMALLER ENTERPRISES.**

2 Section 303(d) of the Small Business Investment Act
3 of 1958 (15 U.S.C. 683(d)) is amended by adding at the
4 end of the following new paragraph:

5 "(3) EXCEPTION.—Notwithstanding paragraphs
6 (1) and (2), a licensee shall not be required to
7 achieve any percentage of such financings (at cost)
8 which is higher than 25 percent which may result
9 from the application of prior statutory or regulatory
10 requirements to all or any portion of the licensee's
11 portfolio.".

12 **SEC. 10. CAPITAL IMPAIRMENT.**

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

20 **SEC. 11. TANGIBLE NET WORTH.**

21 Section 103 of the Small Business Investment Act
22 of 1958 (15 U.S.C. 662) is amended by striking "and"
23 at the end of paragraph (18), by striking the period at
24 the end of paragraph (19) and inserting a semicolon, and
25 by adding the new paragraph after paragraph (19):

1 "(20) for purposes of the terms 'small-business
2 concern' in paragraph (5) and 'smaller enterprise' in
3 paragraph (12) of this section, tangible net worth
4 shall, to the extent used, mean the total new worth
5 of the small business, in accordance with General
6 Accepted Accounting Principles, minus all intangi-
7 bles in accordance with General Accepted Account-
8 ing Principles.".

9 **SEC. 12. DEVELOPMENT OF AGENCY RECORD.**

10 Part A of title III of the Small Business Investment
11 Act of 1958 is amended by adding the following new sec-
12 tion at the end thereof:

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

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

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

1 **SEC. 13. PROGRAM LEVELS.**

2 Section 20 of the Small Business Act is amended by
3 inserting the following new subsection after subsection (e):
4 "(f) TITLE III OF THE SMALL BUSINESS INVEST-
5 MENT COMPANY ACT OF 1958.—
6 "(1) PROGRAM LEVELS 2010.—For fiscal year
7 2010, in carrying out the program authorized by
8 Title III of the Small Business Investment Act of
9 1958, the Administrator is authorized to make—
10 "(A) $5,000,000,000 in purchases of par-
11 ticipating securities; and
12 "(B) $5,000,000,000 in guarantees of de-
13 bentures.
14 "(2) PROGRAM LEVELS 2011.—For fiscal year
15 2011, in carrying out the program authorized by
16 Title III of the Small Business Investment Act of
17 1958, the Administrator is authorized to make—
18 "(A) $5,000,000,000 in purchases of par-
19 ticipating securities; and
20 "(B) $5,5000,000,000 in guarantees of de-
21 bentures.".

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I

111TH CONGRESS
1ST SESSION

H. R. 3722

To amend the Small Business Investment Act of 1958 to improve the New Markets Venture Capital and Renewable Fuel Capital Investment Programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2009

Mrs. KIRKPATRICK of Arizona introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend the Small Business Investment Act of 1958 to improve the New Markets Venture Capital and Renewable Fuel Capital Investment Programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enhanced New Markets and Expanded Investment in Renewable Energy for Small Manufacturers Act of 2009".

TITLE I—ENHANCED NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 101. EXPANSION OF NEW MARKETS VENTURE CAPITAL PROGRAM.

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

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

SEC. 102. IMPROVED NATIONWIDE DISTRIBUTION.

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

"(f) GEOGRAPHIC EXPANSION.—From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria and promotion of nationwide distribution under subsection (c) and shall, to the extent practicable, approve at least one com-

1 pany from each geographic region of the Small Business
2 Administration.".

3 **SEC. 103. INCREASED INVESTMENT IN SMALL BUSINESS**
4 **CONCERNS ENGAGED PRIMARILY IN MANU-**
5 **FACTURING.**

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

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

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

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

23 (1) in the matter preceding subparagraph (A)
24 by inserting after "geographic areas" the following:
25 "and small business concerns located in low-income

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

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

(B) in paragraph (2)(A) by inserting after "smaller enterprises" the following: "or small business concerns".

(d) OPERATIONAL ASSISTANCE GRANTS.—Section 358 of the Small Business Investment Act of 1958 (15 U.S.C. 689g) is amended—

(1) in subsection (a)(1) by inserting after "smaller enterprises" the following: "and small business concerns"; and

(2) in subsection (b)(1) by inserting after "smaller enterprises" the following: "and small business concerns".

SEC. 104. EXPANDED USES FOR OPERATIONAL ASSISTANCE IN MANUFACTURING.

Section 351 of the Small Business Investment Act of 1958 (15 U.S.C. 689), as amended by this Act, is further amended in paragraph (5) by inserting after "business development" the following: "or assistance that assists a small business concern located in a low-income geographic area and engaged primarily in manufacturing with retooling, updating, or replacing machinery or equipment".

SEC. 105. UPDATING DEFINITION OF LOW-INCOME GEOGRAPHIC AREA.

Section 351 of the Small Business Investment Act of 1958 (15 U.S.C. 689), as amended by this Act, is further amended—

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

(2) by inserting after paragraph (1) the following:

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

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

SEC. 106. EXPANDING OPERATIONAL ASSISTANCE TO CONDITIONALLY APPROVED COMPANIES.

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

"(6) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

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

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

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

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

SEC. 107. LIMITATION ON TIME FOR FINAL APPROVAL.

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

1 **SEC. 108. STREAMLINED APPLICATION FOR NEW MARKETS**
2 **VENTURE CAPITAL PROGRAM.**

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

12 **SEC. 109. ELIMINATION OF MATCHING REQUIREMENT.**

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

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

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

20 (3) by striking subclause (III).

21 **SEC. 110. SIMPLIFIED FORMULA FOR OPERATIONAL AS-**
22 **SISTANCE GRANTS.**

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

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

9 **SEC. 111. AUTHORIZATION OF APPROPRIATIONS AND EN-**
10 **HANCED ALLOCATION FOR SMALL MANUFAC-**
11 **TURING.**

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

cated in low-income geographic areas and engaged primarily in manufacturing"; and

(3) in paragraph (2)—

(A) by striking "$30,000,000" and inserting "$20,000,000"; and

(B) by inserting before the period at the end the following: ", of which not less than 50 percent shall be used to make grants to companies engaged primarily in development of and investment in small business concerns located in low-income geographic areas and engaged primarily in manufacturing".

TITLE II—EXPANDED INVESTMENT IN SMALL BUSINESS RENEWABLE ENERGY

SEC. 201. EXPANDED INVESTMENT IN RENEWABLE ENERGY.

Part C of title III of the Small Business Investment Act of 1958 (15 U.S.C. 690 et seq.) is amended—

(1) in the heading by striking "**RENEWABLE FUEL CAPITAL INVESTMENT**" and inserting "**RENEWABLE ENERGY CAPITAL INVESTMENT**";

(2) in the heading of paragraph (4) of section 381 by striking "RENEWABLE FUEL CAPITAL IN-

VESTMENT" and inserting "RENEWABLE ENERGY CAPITAL INVESTMENT";

(3) in the heading of section 384 by striking "**RENEWABLE FUEL CAPITAL INVESTMENT**" and inserting "**RENEWABLE ENERGY CAPITAL INVESTMENT**"; and

(4) by striking "Renewable Fuel Capital Investment" each place it appears and inserting "Renewable Energy Capital Investment".

SEC. 202. RENEWABLE ENERGY CAPITAL INVESTMENT PROGRAM MADE PERMANENT.

Part C of title III of the Small Business Investment Act of 1958 (15 U.S.C. 690 et seq.), as amended by this Act, is further amended—

(1) in the heading by striking "**PILOT**"; and

(2) by striking section 398.

SEC. 203. EXPANDED ELIGIBILITY FOR SMALL BUSINESSES.

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

1 **SEC. 204. EXPANDED USES FOR OPERATIONAL ASSISTANCE**
2 **IN MANUFACTURING AND SMALL BUSI-**
3 **NESSES.**

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

11 **SEC. 205. EXPANSION OF RENEWABLE ENERGY CAPITAL IN-**
12 **VESTMENT PROGRAM.**

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

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

1 **SEC. 206. SIMPLIFIED FEE STRUCTURE TO EXPEDITE IM-**
2 **PLEMENTATION.**

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

6 **SEC. 207. INCREASED OPERATIONAL ASSISTANCE GRANTS.**

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

11 **SEC. 208. AUTHORIZATIONS OF APPROPRIATIONS.**

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

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

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

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

○

I

111TH CONGRESS
1ST SESSION

H. R. 3014

To amend the Small Business Act to provide loan guarantees for the acquisition of health information technology by eligible professionals in solo and small group practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2009

Mrs. DAHLKEMPER (for herself, Mr. ALTMIRE, Mr. SCHRADER, Ms. VELÁZQUEZ, Mr. SHULER, Ms. CLARKE, Mr. ELLSWORTH, and Mr. NYE) introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To amend the Small Business Act to provide loan guarantees for the acquisition of health information technology by eligible professionals in solo and small group practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the " Small Business Health Information Technology Financing Act".

1 **SEC. 2. AMENDMENT OF SMALL BUSINESS ACT.**

2 The Small Business Act is amended by redesignating
3 section 44 as section 45 and by inserting the following
4 new section after section 43:

5 **"SEC. 44. LOAN GUARANTEES FOR HEALTH INFORMATION**
6 **TECHNOLOGY.**

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

8 "(1) The term 'health information technology'
9 means computer hardware, software, and related
10 technology that supports the meaningful EHR use
11 requirements set forth in section 1848(o)(2)(A) of
12 the Social Security Act (42 U.S.C. 1395w–
13 4(o)(2)(A)) and is purchased by an eligible profes-
14 sional to aid in the provision of health care in a
15 health care setting, including, but not limited to,
16 electronic medical records, and that provides for—

17 "(A) enhancement of continuity of care for
18 patients through electronic storage, trans-
19 mission, and exchange of relevant personal
20 health data and information, such that this in-
21 formation is accessible at the times and places
22 where clinical decisions will be or are likely to
23 be made;

24 "(B) enhancement of communication be-
25 tween patients and health care providers;

1 "(C) improvement of quality measurement
2 by eligible professionals enabling them to col-
3 lect, store, measure, and report on the proc-
4 esses and outcomes of individual and population
5 performance and quality of care;
6 "(D) improvement of evidence-based deci-
7 sion support; or
8 "(E) enhancement of consumer and pa-
9 tient empowerment.
10 Such term shall not include information technology
11 whose sole use is financial management, mainte-
12 nance of inventory of basic supplies, or appointment
13 scheduling.
14 "(2) The term 'eligible professional' means any
15 of the following:
16 "(A) A physician (as defined in section
17 1861(r) of the Social Security Act (42 U.S.C.
18 1395x(r))
19 "(B) A practitioner described in section
20 1842(b)(18)(C) of that Act.
21 "(C) A physical or occupational therapist
22 or a qualified speech-language pathologist.
23 "(D) A qualified audiologist (as defined in
24 section 1861(ll)(3)(B)) of that Act.

1 "(3) The term 'qualified eligible professional'
2 means an eligible professional whose office can be
3 classified as a small business concern by the Admin-
4 istrator Small Business Administration for purposes
5 of this Act under size standards established under
6 section 3 of this Act.
7 "(b) LOAN GUARANTEES FOR QUALIFIED ELIGIBLE
8 PROFESSIONALS.—
9 "(1) IN GENERAL.—Subject to paragraph (2),
10 the Administrator may guarantee up to 90 percent
11 of the amount of a loan made to a qualified eligible
12 professional to be used for the acquisition of health
13 information technology for use in such eligible pro-
14 fessional's medical practice and for the costs associ-
15 ated with the installation of such technology. Except
16 as otherwise provided in this section, the terms and
17 conditions that apply to loans made under section
18 7(a) of the Small Business Act shall apply to loan
19 guarantees made under this section.
20 "(2) LIMITATIONS ON GUARANTEE AMOUNTS.—
21 The maximum amount of loan principal guaranteed
22 under this subsection may not exceed—
23 "(A) $350,000 with respect to any single
24 qualified eligible professional, and

1 "(B) $2,000,000 with respect to a singled
2 group of affiliated qualified eligible profes-
3 sionals.
4 "(c) FEES.—(1) The Administrator may impose a
5 guarantee fee on the borrower for the purpose of reducing
6 the cost (as defined in section 502(5) of the Federal Credit
7 Reform Act of 1990) of the guarantee to zero in an
8 amount not to exceed 2 percent of the total guaranteed
9 portion of any loan guaranteed under this section. The Ad-
10 ministrator may also impose annual servicing fees on lend-
11 ers not to exceed 0.5 percent of the outstanding balance
12 of the guarantees on lenders' books.
13 "(2) No service fees, processing fees, origination fees,
14 application fees, points, brokerage fees, bonus points, or
15 other fees may be charged to a loan applicant or recipient
16 by a lender in the case of a loan guaranteed under this
17 section.
18 "(d) DEFERRAL PERIOD.—Loans guaranteed under
19 this section shall carry a deferral period of not less than
20 1 year and not more than 3 years. The Administrator shall
21 have the authority to subsidize interest during the deferral
22 period.
23 "(e) EFFECTIVE DATE.—No loan may be guaranteed
24 under this section until the meaningful EIIR use require-

1 ments have been determined by the Secretary of Health
2 and Human Services.
3 "(f) SUNSET.—No loan may be guaranteed under
4 this section after 5 years after meaningful EHR use re-
5 quirements have been determined by the Secretary of
6 Health and Human Services.
7 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated for the cost (as defined
9 in section 502(5) of the Federal Credit Reform Act of
10 1990) of guaranteeing $10,000,000,000 in loans under
11 this section. The Administrator shall determine such pro-
12 gram cost separately and distinctly from other programs
13 operated by the Administrator.".

○

I

111TH CONGRESS
1ST SESSION

H. R. 3738

To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. NYE introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Small Business Early-
5 Stage Investment Act of 2009".

SEC. 2. SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM.

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

"PART D—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

"SEC. 399A. ESTABLISHMENT OF PROGRAM.

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

"SEC. 399B. ADMINISTRATION OF PROGRAM.

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

"SEC. 399C. APPLICATIONS.

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

1 "(b) REQUIREMENTS FOR APPLICATION.—An appli-
2 cation to participate in the program shall include the fol-
3 lowing:
4 "(1) A business plan describing how the appli-
5 cant intends to make successful venture capital in-
6 vestments in early-stage small businesses in targeted
7 industries.
8 "(2) Information regarding the relevant venture
9 capital investment qualifications and backgrounds of
10 the individuals responsible for the management of
11 the applicant.
12 "(3) A description of the extent to which the
13 applicant meets the selection criteria under section
14 399D.
15 "(c) APPLICATIONS FROM SMALL BUSINESS INVEST-
16 MENT COMPANIES.—The Administrator shall establish an
17 abbreviated application process for small business invest-
18 ment companies that have received a license under section
19 301 and that are applying to participate in the program.
20 Such abbreviated process shall incorporate a presumption
21 that such small business investment companies satisfac-
22 torily meet the selection criteria under paragraphs (3) and
23 (5) of section 399D(b).

1 **"SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**
2 **COMPANIES.**

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

9 "(b) SELECTION CRITERIA.—In making a determina-
10 tion under subsection (a), the Administrator shall consider
11 each of the following:

12 "(1) The likelihood that the applicant will meet
13 the goals specified in the business plan of the appli-
14 cant.

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

18 "(3) The character and fitness of the manage-
19 ment of the applicant.

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

22 "(5) The extent to which the applicant will con-
23 centrate investment activities on early-stage small
24 businesses in targeted industries.

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

1 "(7) The experience of the management of the
2 applicant with respect to establishing a profitable in-
3 vestment track record.

4 **"SEC. 399E. GRANTS.**

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

7 "(b) GRANT AMOUNTS.—

8 "(1) NON-FEDERAL CAPITAL.—A grant made
9 to a participating investment company under the
10 program may not be in an amount that exceeds the
11 amount of the capital of such company that is not
12 from a Federal source and that is available for in-
13 vestment on or before the date on which a grant is
14 drawn upon. Such capital may include legally bind-
15 ing commitments with respect to capital for invest-
16 ment.

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

21 "(c) GRANT PROCESS.—In making a grant under the
22 program, the Administrator shall commit a grant amount
23 to a participating investment company and the amount of
24 each such commitment shall remain available to be drawn
25 upon by such company—

1 "(1) for new-named investments during the 5-
2 year period beginning on the date on which each
3 such commitment is first drawn upon; and
4 "(2) for follow-on investments and management
5 fees during the 10-year period beginning on the date
6 on which each such commitment is first drawn upon,
7 with not more than 2 additional 1-year periods avail-
8 able at the discretion of the Administrator.

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

11 "(a) IN GENERAL.—As a condition of receiving a
12 grant under the program, a participating investment com-
13 pany shall make all of the investments of such company
14 in small business concerns, of which at least 50 percent
15 shall be early-stage small businesses in targeted indus-
16 tries.

17 "(b) EVALUATION OF COMPLIANCE.—With respect to
18 a grant amount committed to a participating investment
19 company under section 399E, the Administrator shall
20 evaluate the compliance of such company with the require-
21 ments under this section if such company has drawn upon
22 50 percent of such commitment.

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

24 "Each investment made by a participating invest-
25 ment company under the program shall be treated as com-

1 prised of capital from grants under the program according
2 to the ratio that capital from grants under the program
3 bears to all capital available to such company for invest-
4 ment.

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

6 "(a) GRANT INTEREST.—

7 "(1) IN GENERAL.—As a condition of receiving
8 a grant under the program, a participating invest-
9 ment company shall convey a grant interest to the
10 Administrator in accordance with paragraph (2).

11 "(2) EFFECT OF CONVEYANCE.—The grant in-
12 terest conveyed under paragraph (1) shall have all
13 the rights and attributes of other investors attrib-
14 utable to their interests in the participating invest-
15 ment company, but shall not denote control or vot-
16 ing rights to the Administrator. The grant interest
17 shall entitle the Administrator to a pro rata portion
18 of any distributions made by the participating in-
19 vestment company equal to the percentage of capital
20 in the participating investment company that the
21 grant comprises. The Administrator shall receive dis-
22 tributions from the participating investment com-
23 pany at the same times and in the same amounts as
24 any other investor in the company with a similar in-
25 terest. The investment company shall make alloca-

1 tions of income, gain, loss, deduction, and credit to
2 the Administrator with respect to the grant interest
3 as if the Administrator were an investor.

4 "(b) MANAGER PROFITS.—As a condition of receiv-
5 ing a grant under the program, the manager profits inter-
6 est payable to the managers of a participating investment
7 company under the program shall not exceed 20 percent
8 of profits, exclusive of any profits that may accrue as a
9 result of the capital contributions of any such managers
10 with respect to such company. Any excess of this amount,
11 less taxes payable thereon, shall be returned by the man-
12 agers and paid to the investors and the Administrator in
13 proportion to the capital contributions and grants paid in.
14 No manager profits interest (other than a tax distribution)
15 shall be paid prior to the repayment to the investors and
16 the Administrator of all contributed capital and grants
17 made.

18 "(c) DISTRIBUTION REQUIREMENTS.—As a condition
19 of receiving a grant under the program, a participating
20 investment company shall make all distributions to all in-
21 vestors in cash and shall make distributions within a rea-
22 sonable time after exiting investments, including following
23 a public offering or market sale of underlying investments.

1 **"SEC. 399I. FUND.**

2 "There is hereby created within the Treasury a sepa-
3 rate fund for grants which shall be available to the Admin-
4 istrator subject to annual appropriations as a revolving
5 fund to be used for the purposes of the program. All
6 amounts received by the Administrator, including any
7 moneys, property, or assets derived by the Administrator
8 from operations in connection with the program, shall be
9 deposited in the fund. All expenses and payments, exclud-
10 ing administrative expenses, pursuant to the operations of
11 the Administrator under the program shall be paid from
12 the fund.

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

14 "To the extent not inconsistent with requirements
15 under this part, the Administrator may apply sections
16 309, 311, 312, 313, and 314 to activities under this part
17 and an officer, director, employee, agent, or other partici-
18 pant in a participating investment company shall be sub-
19 ject to the requirements under such sections.

20 **"SEC. 399K. DEFINITIONS.**

21 "In this part, the following definitions apply:

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

26 "(A) is domiciled in a State;

1 "(B) has not generated gross annual reve-
2 nues exceeding $15,000,000 in any of the pre-
3 vious 3 years; and
4 "(C) is engaged primarily in researching,
5 developing, manufacturing, producing, or bring-
6 ing to market goods, products, or services with
7 respect to any of the following business sectors:
8 "(i) Agricultural technology.
9 "(ii) Energy technology.
10 "(iii) Environmental technology.
11 "(iv) Life science.
12 "(v) Information technology.
13 "(vi) Digital media.
14 "(vii) Clean technology.
15 "(viii) Defense technology.
16 "(2) PARTICIPATING INVESTMENT COMPANY.—
17 The term 'participating investment company' means
18 an applicant approved under section 399D to par-
19 ticipate in the program.
20 "(3) SMALL BUSINESS CONCERN.—The term
21 'small business concern' has the same meaning given
22 such term under section 3(a) of the Small Business
23 Act (15 U.S.C. 632(a)).

1 **"SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.**

2 "There is authorized to be appropriated to carry out
3 the program $250,000,000 for the first full fiscal year be-
4 ginning after the date of the enactment of this part.".

○

I

111TH CONGRESS
1ST SESSION

H. R. 3743

To amend the Small Business Act to improve the disaster relief programs of the Small Business Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. GRIFFITH introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To amend the Small Business Act to improve the disaster relief programs of the Small Business Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Disaster Readiness and Reform Act of 2009".

SEC. 2. REVISED COLLATERAL REQUIREMENTS.

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

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

(2) in subsection (f), as added by section 12068(a)(2) of the Small Business Disaster Response and Loan Improvements Act of 2008 (subtitle B of title XII of the Food, Conservation, and Energy Act of 2008; Public Law 110–246), by adding at the end the following:

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

SEC. 3. INCREASED LIMITS.

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

(1) in paragraph (3)(E) by striking "$1,500,000" each place it appears and inserting "$3,000,000"; and

(2) in paragraph (8)(A) by striking "$2,000,000" and inserting "$3,000,000".

SEC. 4. REVISED REPAYMENT TERMS.

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

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

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

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

SEC. 5. REVISED DISBURSEMENT PROCESS.

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

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

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

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

"(ii) the second disbursement shall consist of 50 percent of the loan amounts

that remain after the first disbursement, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of 50 percent of the first disbursement; and

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

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

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

"(ii) the second disbursement shall consist of 30 percent of the loan amounts that remain after the first disbursement,

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

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

9 **SEC. 6. GRANT PROGRAM.**

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

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

concern in the same county in which the concern was originally located;

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

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

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

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

SEC. 7. REGIONAL DISASTER WORKING GROUPS.

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

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

(2) by redesignating subsection (d) as subsection (e); and

1 (3) by inserting after subsection (c) the fol-
2 lowing:
3 "(d) REGIONAL DISASTER WORKING GROUPS.—In
4 carrying out subsection (a), the Administrator, acting
5 through the regional administrators of the regional offices
6 of the Administration, shall develop a disaster prepared-
7 ness and response plan for each region of the Administra-
8 tion. Each such plan shall be developed in cooperation
9 with Federal, State, and local emergency response authori-
10 ties and representatives of businesses located in the region
11 to which such plan applies. Each such plan shall identify
12 and include a plan relating to the 3 disasters, natural or
13 manmade, most likely to occur in the region to which such
14 plan applies.".

15 **SEC. 8. OUTREACH GRANTS FOR LOAN APPLICANT ASSIST-**
16 **ANCE.**

17 Section 7(b) of the Small Business Act (15 U.S.C.
18 636(b)), as amended by this Act, is further amended by
19 inserting after paragraph (10) the following:
20 "(11) OUTREACH GRANTS FOR LOAN APPLI-
21 CANT ASSISTANCE.—
22 "(A) IN GENERAL.—From amounts made
23 available for administrative expenses relating to
24 activities under this subsection, the Adminis-

1 trator is authorized to make grants to the fol-
2 lowing:
3 "(i) A women's business center in an
4 area affected by a disaster.
5 "(ii) A small business development
6 center in an area affected by a disaster.
7 "(iii) A Veteran Business Outreach
8 Center in an area affected by a disaster.
9 "(iv) A chamber of commerce in an
10 area affected by a disaster.
11 "(B) USE OF GRANT.—An entity specified
12 under subparagraph (A) shall use a grant re-
13 ceived under this paragraph to provide applica-
14 tion preparation assistance to applicants for a
15 loan under this subsection.".

○

Testimony Submitted by U.S. Representative Rick Larsen

Subcommittee on Finance and Tax

October 8, 2009

Mr. Chairman, thank you for this opportunity to speak in support of legislation under review by the Subcommittee today. Small business success means jobs. Small businesses have historically driven innovation and growth in the United States and their success will be critical to our nation moving out of economic recession and toward recovery. In my view, the bills being considered today – particularly H.R. 3723 -- make important steps forward by providing our nation's small businesses with the capital they need to succeed.

Small businesses are job creators. Our nation's economic recovery starts with small business. According to the Small Business Administration (SBA), over half of the nation's workers are employed by a small business, and according to the Center for Economic Vitality, in my district over 98 percent of all businesses are small businesses. However, the total number of jobs in these small companies has dropped precipitously over the last 2 years and Congress must do everything it can to help get these jobs back.

Earlier this week, it was announced that unemployment in my state of Washington had is 9.3 percent. While I believe steps taken by the Congress to enact the American Recovery and Reinvestment Act (ARRA) were critical in stopping the economic bleeding and paving the way toward economic recovery, more action must be taken -- particularly for our small businesses.

One of the key drivers of small business success is access to capital. Unfortunately, credit availability is at an unprecedented low and small businesses are feeling the credit crunch. I particularly support the changes to the America's Recovery Capital (ARC) loan program. A number of businesses in my district have had difficulty accessing the ARC loans both because of the difficulty of the process and the lack of action by lenders. By extending the program for another year, simplifying the application to only one page, and increasing the maximum size of the loan from $35,000 to $50,000, this bill increases the chances of a small business in my district being able to secure an ARC loan and creating jobs. It is also critically important, however, that the SBA work with lenders on the ARC program and do what it can to encourage participation in this critical program.

I also strongly support provisions in these bills that increase the maximum gross size of 7(a) loans from $2 million to $3 million and focuses the loan program on startup and early stage small firms. I also support the creation of the Small Bank Outreach program to help identify

and support small banks, credit unions, and community lenders that may not be aware of their ability to participate in SBA loan programs.

Lastly, the creation of the National Lender Training Program within the SBA is a very important step to ensuring capital starts moving again. One concern I have heard from lenders in my district is that, although SBA loans are guaranteed, the agency can be very slow in repaying the guarantees or sometimes simply denying the application. This legislation rightly puts an end to improper denials and long waiting periods when lenders apply for the SBA to honor its guarantees by requiring prompt and proper payment of guaranty repurchase applications.

Mr. Chairman, the legislation pending before this Committee comes at a very important time. Our nation's economy is slowly beginning to recover. However, a jobless recovery is no recovery at all. The key to creating jobs is supporting our small businesses, and these bills do that appropriately.

Thank you for allowing me this opportunity to speak.

○