

NEW MARKETS INITIATIVE ACT OF 1999

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JUNE 28, 2000.—Ordered to be printed
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Mr. LEACH, from the Committee on Banking and Financial
Services, submitted the following

R E P O R T

[To accompany H.R. 2848]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 2848) to amend the Small Business Investment Act of 1958 and the Small Business Act to establish a New Markets Venture Capital Program, to establish an America's Private Investment Company Program, to amend the Internal Revenue Code of 1986 to establish a New Markets Tax Credit, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, strike title III in the table of contents and insert the following:

TITLE III—AMERICA'S PRIVATE INVESTMENT COMPANIES

- Sec. 301. Short Title.
- Sec. 302. Findings and purposes.
- Sec. 303. Definitions.
- Sec. 304. Authorization.
- Sec. 305. Selection of APICs.
- Sec. 306. Operations of APICs.
- Sec. 307. Credit enhancement by the Federal Government.
- Sec. 308. APIC requests for guarantee actions.
- Sec. 309. Examination and monitoring of APICs.
- Sec. 310. Penalties.
- Sec. 311. Effective date.
- Sec. 312. Sunset.

Page 29, strike line 3 and all that follows through line 23 on page 62 and insert the following:

TITLE III—AMERICA’S PRIVATE INVESTMENT COMPANIES

SEC. 301. SHORT TITLE.

This title may be cited as the “America’s Private Investment Companies Act”.

SEC. 302. FINDINGS AND PURPOSES.

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

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

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

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

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

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

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

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

SEC. 303. DEFINITIONS.

As used in this title:

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

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

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

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

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

of Housing and Urban Development, as the context requires.

(6) LICENSE.—The term “license” means a license issued by HUD as provided in section 304.

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

(A) a census tract or tracts that have—

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

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

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

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

(9) PRIVATE EQUITY CAPITAL.—

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

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

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

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

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

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

(i) funds borrowed by an entity from any source or obtained through the issuance of leverage; except that this clause may not be construed to exclude amounts evidenced by a legally binding and irrevocable investment

commitment in the entity, or the use by an entity of a pledge of such investment commitment to obtain bridge financing from a private lender to fund the entity's activities on an interim basis; or

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

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

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

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

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

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

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

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

(11) **QUALIFIED DEBENTURE.**—The term “qualified debenture” means a debt instrument having terms that meet the requirements established pursuant to section 306(c)(1).

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

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

SEC. 304. AUTHORIZATION.

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

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

or directives as the Secretary determines are appropriate to carry out such duties.

(c) USE OF CREDIT SUBSIDY FOR LICENSES.—

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

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

(B) to the extent the limitation under section 305(e)(1) applies, the number authorized under such section.

(2) USE OF ADDITIONAL CREDIT SUBSIDY.—Subject to the limitation under paragraph (1), the Secretary may use any budget authority available after credit subsidy has been allocated for the APICs initially licensed pursuant to section 305 as follows:

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

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

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

(ii) COMPETITION.—An increase may only be provided for a fiscal year pursuant to a competition for such fiscal year among APICs eligible for, and requesting, such an increase. The competition shall be based upon criteria that the Secretary shall establish, which shall include the financial soundness and performance of the APICs, as measured by achievement of the public performance goals included in the APICs statements required under section 305(a)(6) and audits conducted under section 309(b)(2). Among the criteria established by the Secretary to determine priority for selection under this section, the Secretary shall include making investments in and loans to qualified active businesses in urban or rural areas that have been designated under subchapter U of Chapter 1 of the Internal Revenue Code of 1986 as empowerment zones or enterprise communities.

(d) COOPERATION AND COORDINATION.—

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

Treasury, and other agencies in the discretion of the Secretary, on implementation of this title, including regulation, examination, and monitoring of APICs under this title.

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

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

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

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

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

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

(g) FUNDING.—

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

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

(3) AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATIVE EXPENSES.—For each of the fiscal years 2000, 2001, 2002, 2003, and 2004, there is authorized to be appropriated \$1,000,000 for administrative expenses

for carrying out this title. The Secretary may transfer amounts appropriated under this paragraph to any appropriation account of HUD or another agency, to carry out the program under this title. Any agency to which the Secretary may transfer amounts under this title is authorized to accept such transferred amounts in any appropriation account of such agency.

SEC. 305. SELECTION OF APICS.

(a) **ELIGIBLE APPLICANTS.**—An entity shall be eligible to be selected for licensing under section 304 as an APIC only if the entity submits an application in compliance with the requirements established pursuant to subsection (b) and the entity meets or complies with the following requirements:

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

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

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

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

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

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

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

(i) making investments in low-income communities that further economic development

objectives by targeting such investments in businesses or trades that comply with the requirements under subparagraphs (A) through (C) of section 303(10) relating to low-income communities in a manner that benefits low-income persons;

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

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

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

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

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

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

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

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

(b) COMPETITIONS.—The Secretary shall select eligible entities under subsection (a) to be licensed under section 304 as APICs on the basis of competitions. The Secretary shall announce each such competition by causing a notice to be published in the Federal Register that invites applications for licenses and sets forth the requirements for application and such other terms of the competition not otherwise provided for, as determined by the Secretary.

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

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

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

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

(1) CAPACITY.—

(A) MANAGEMENT.—The extent to which the entity's management has the quality, experience, and expertise to make and manage successful in-

vestments for community and economic development in low-income communities.

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

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

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

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

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

(i) creating, within 2 years of the completion of the initial such investment, job opportunities, opportunities for ownership, and other economic opportunities within a low-income community, both short-term and of a longer duration;

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

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

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

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

(vi) rural development;

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

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

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

(C) the quality of jobs to be created for residents of low-income communities, taking into consideration such factors as the payment of higher

wages, job security, employment benefits, opportunity for advancement, and personal asset building;

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

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

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

(e) FIRST YEAR REQUIREMENTS.—

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

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

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

(f) COMMUNICATIONS BETWEEN HUD AND APPLICANTS.—

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

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

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

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

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

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

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

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

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

SEC. 306. OPERATIONS OF APICS.

(a) **POWERS AND AUTHORITIES.**—

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

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

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

(C) the Secretary may prescribe by regulation.

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

(b) **INVESTMENT LIMITATIONS.**—

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

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

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

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

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

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

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

(c) BORROWING POWERS; QUALIFIED DEBENTURES.—

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

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

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

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

(3) REPAYMENT.—

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

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

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

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

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

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

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

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

SEC. 307. CREDIT ENHANCEMENT BY THE FEDERAL GOVERNMENT.

(a) **ISSUANCE AND GUARANTEE OF QUALIFIED DEBENTURES.**—

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

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

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

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

(c) **GUARANTEE OF TRUST CERTIFICATES.**—

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

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

(3) **PROPORTIONATE REDUCTION OPTION.**—In the event that the Secretary elects not to exercise the option under paragraph (2), and a qualified debenture in

such trust is prepaid, or in the event of default of a qualified debenture, the guarantee of timely payment of principal and interest on the trust certificate shall be reduced in proportion to the amount of principal and interest that such prepaid qualified debenture represents in the trust. Interest on prepaid or defaulted qualified debentures shall accrue and be guaranteed by the Secretary only through the date of payment of the guarantee. During the term of a trust certificate, it may be called for redemption due to prepayment or default of all qualified debentures that are in the corpus of the trust.

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

(e) SUBROGATION AND LIENS.—

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

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

(f) REGISTRATION.—

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

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

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

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

SEC. 308. APIC REQUESTS FOR GUARANTEE ACTIONS.

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

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

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

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

(B) all terms and conditions of its license, any cease-and-desist order issued under section 310, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding; and

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

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

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

sibilities before acting on the APIC's request for the guarantee that is covered by this subsection.

(c) RESPONSIBILITY FOR ENVIRONMENTAL REVIEWS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) be in a form acceptable to the Secretary;

(B) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(C) specify that the State or unit of general local government under this subsection has fully carried out its responsibilities as described under paragraph (2); and

(D) specify that the certifying officer—

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations

issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and

(ii) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

SEC. 309. EXAMINATION AND MONITORING OF APICS.

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

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

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

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

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

(4) **EXAMINATION STANDARDS.**—

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

continuing basis. The Secretary may, by regulation, establish any additional standards for sound financial management practices, including standards that address solvency and financial exposure.

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

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

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

(e) GAO REPORT.—

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

(2) CONTENTS.—The report shall include—

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

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

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

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

SEC. 310. PENALTIES.

(a) VIOLATIONS SUBJECT TO PENALTY.—The Secretary may impose a penalty under this subsection on any APIC or manager of an APIC that, by any act, practice, or failure to act, engages in fraud, mismanagement, or non-

compliance with this title, the regulations under this title, or a condition of the APIC's license under this title. The Secretary shall, by regulation, identify, by generic description of a role or responsibilities, any manager of an APIC that is subject to a penalty under this section.

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

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

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

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

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

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

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

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

(3) revoke the APIC's license.

(d) EFFECTIVE DATE OF PENALTIES.—

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

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

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

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

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

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

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

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

to challenge the order, or the suspension or conditioning, or the revocation, of an APIC's license.

SEC. 311. EFFECTIVE DATE.

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

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

SEC. 312. SUNSET.

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

- (1) the Secretary may not license any APIC; and
- (2) no amount may be appropriated for the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c)) of any guarantee under this title for any debenture issued by an APIC.

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

EXPLANATION OF THE LEGISLATION

H.R. 2848, the “New Markets Initiative Act of 1999” authorizes in Title III (entitled “America’s Private Investment Companies Act”) the Secretary of Housing and Urban Development (HUD) to license a number of privately managed, for-profit investment companies for purposes of making large-scale, equity and debt investments in low-income urban and rural areas. Each America’s Private Investment Company (“APIC”) must have a minimum of \$25 million in private equity capital contributed by investors in order to be licensed by HUD. An APIC would be eligible to issue debentures, guaranteed by the government, for twice (200%) the amount of its total equity capital. The contributed equity and amounts raised through issuance of debentures are to be invested in businesses operating in low and moderate-income areas. The government-guaranteed debt would be repaid first.

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

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

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

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

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

LEGISLATIVE HISTORY

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

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

During the markup, the Committee approved one amendment, by unanimous consent, which inserted in lieu the provisions of H.R. 2764 as marked up and ordered reported on April 12, 2000. With a quorum present, a motion to adopt H.R. 2848 and favorably report the bill, as amended, to the House was approved by voice vote.

BACKGROUND AND NEED FOR LEGISLATION

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

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

The Administration has also proposed a series of programs, collectively known as the “New Markets Initiative,” also intended to foster economic development in low-income communities. These proposals include tax credits for businesses in these areas (“New Markets Tax Credits”), a small business component (establishing a “New Markets Venture Capital Program”), and the formation of a number of companies intended to make relatively large scale equity and credit investments in distressed areas—APICs. The FY 2000 VA/HUD Appropriations Act provided that \$20 million in credit subsidy would be available for use by APICs for Fiscal Year 2000 if the program was authorized by June 30, 2000. If the program is not authorized by that date, the funding reverts to the Community Development Financial Institutions program administered by the Department of the Treasury.

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

to lessen the cost of capital so that these large-scale investments would be made.

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

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

COMMITTEE ACTIONS REGARDING INTRODUCED LEGISLATION

The Committee adopted a Managers' Amendment during the markup of H.R. 2764, sponsored by Chairman Leach, Mr. Lazio, Ranking Member LaFalce, and Mr. Kanjorski, which made substantial changes to the original bill. H.R. 2764, as marked up by the Committee, was subsequently substituted for Title III of H.R. 2848, which was then reported by the Committee.

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

Minimizing the potential for fraud and abuse

The Managers' Amendment adopted by the Committee added certain defined terms to the legislation found in Section 303 of H.R. 2848, "Definitions," and further defined some existing terms of the bill. These additions and revisions make more specific and

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

Additional changes were included in the Managers' Amendment to enhance the integrity of the program. For example, the Committee believed it was important to set forth more clearly in Section 307 of the bill the seniority of the federal government's position in relation to any other obligation the APIC may have. A change to require the HUD Secretary to make a determination, prior to the licensing of any APIC, that the management of the entity is clearly qualified was also made. Section 309, "Examination and Monitoring of APICs" has been revised to require that each APIC submit an annual independent audit detailing its investments to the Secretary. Changes were also made to Section 309 to require the HUD Secretary to report annually to Congress on APICs and their investments. Finally, in Section 310, "Penalties", the Committee strengthened the power and sanctions available to HUD so that the Department can more effectively avert any undue taxpayer losses.

Clearly stating congressional intent regarding APIC investments

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

come areas eligible for APIC investments. However, a statutory requirement that HUD define all of these areas nationwide would have been overly burdensome and impractical in the Committee's view.

For this reason, language added by the Managers' Amendment and appearing in Section 305(a)(6), "Statement of Public Purpose Goals," refers to investments "that further economic development objectives by targeting such investments in businesses that comply with the requirements [of this Act] * * * in a manner that benefits low-income persons." The Committee intends by addition of this language that APICs channel their activities toward truly meritorious investments without precisely delineating within individual census tracts where the businesses these APICs invest in must be located. The Committee does not intend that APICs meet compliance requirements under this legislation by primarily making investments in subareas of an otherwise qualifying low-income community that have resident incomes disproportionately higher, or that show patterns of displacement and more rapidly increasing property values, than those of the larger qualifying area. By the same token, in determining compliance with the "qualified active business" test for APIC investments, the term "low-income community" may be interpreted to include specific locations in an area with a very high population density that are located immediately adjacent to, but not within, a low-income community. Investments that qualify under this interpretation must primarily benefit low-income persons within the qualifying adjacent low-income community.

The Committee notes that under Section 306(b), "Substantially all investments that an APIC makes shall be qualified low-income investments * * *" Rather than establishing a specific percentage in the statute, the intent of the Committee is that the term "substantially all" in this context be read in accordance with and reflect existing Treasury guidelines and Internal Revenue Service regulations governing investments in low- and moderate-income areas, such as those existing for investments made in empowerment zones, for example. Similarly, under Section 142 of the IRS Code, 95% of proceeds raised under the provision must be used for the purposes specified. The intent of the Committee is that "substantially all" in the context of APIC investments be read to mean this approximately 95% level that currently permeates the world of tax-exempt financing.

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

Regarding the types of entities that should be chosen as APICs, the Committee believed further specificity was required in the legislation to set forth examples of the underlying public purpose goals and nature of each APIC. Specifically, in Section 305, "Selection of APICs", the Committee believed a further delineation of the types of goals that licensed APICs can be expected to pursue was

appropriate. Therefore, Section 305(A)(6) now includes references to the following: creating jobs within two years of making an investment; enhancing economic competition, including the advancement of technology; promoting rural development; achieving certain environmental goals; and benefiting small business. By setting forth more clearly in statute the types of goals to be pursued and the activities in which these APICs are to be engaged, the Committee intends to provide additional guidance to the Secretary as to the types of APICs which should be considered favorably in the selection process.

In terms of specific selection criteria, the Committee believes that the criteria as set forth in the original legislation served as minimum eligibility requirements rather than as true measures for selecting among various applicants. For example, the Secretary under the original legislation could determine whether an applicant had qualified management prior to licensing the applicant as an APIC. The Committee, however, intends that the statute reflect the Secretary's ability to make qualitative distinctions regarding management, allowing licensing of one APIC over another based on the existence of an exceptional management record and proven expertise in making investments benefiting low-income communities. In other words, the Committee believes the Secretary should choose among the applicants those APICs that meet not just the minimum statutory requirements, but whose investments are more likely to result in the most benefit to low- and moderate-income communities. With that in mind, the Managers' Amendment added language in Section 305(d) establishing selection criteria the Secretary shall use to determine which APICs are to be licensed. An APIC applicant will be chosen for licensing based on the extent such applicant is expected to achieve the goals of the legislation by meeting or exceeding the selection criteria established under this subsection, which may include additional criteria established by the Secretary.

The Committee intends that rural and small communities not be unfairly or arbitrarily disadvantaged in the selection process. For this reason, Section 305(c)(2) was added by the Managers' Amendment to provide that when selecting APICs for licensing, the HUD Secretary to the extent practicable ensure geographical diversity and a mix of APICs so that both rural and urban communities may be served by this program. The Committee notes that in addition to large cities, there are also economically distressed areas in mid-sized and smaller metropolitan areas and non-metropolitan areas. Consideration of the needs of these communities should not be absent from APIC selection process. The intent of the Committee is that the Secretary strive for balance, fairness and diversity in the selection process.

In adding legislative language regarding the selection process, the Committee attempted to avoid imposing requirements as to exactly how many of each type of APIC should be chosen in the selection process. In the Committee's view, imposing numerical requirements would not be the proper approach because neither Congress nor the Administration can know in advance exactly what entities will apply to be licensed. The Committee made one important exception to this approach regarding the selection process for Native Americans. By definition, most of the lands on reservations would

qualify for investments by APICs, as would rural and other low-income communities. However, the Committee was concerned that the added complexity of investing on Native American lands, including dealing with the Bureau of Indian Affairs, unfamiliarity with the varied tribal laws, and what in too many cases amounts to a cultural discomfort on the part of much of the finance community in doing business on Indian lands, were factors making business investment in Native Americans lands qualitatively different, and much more difficult, than investments in other low-income rural or urban communities. The Committee was concerned that the available applicants would not include entities with the capacity, or which viewed as their mission, to invest specifically on Native American lands. For this reason, the Managers' Amendment included a requirement that of those APICs selected in the first year, one would be a Native American Private Investment Company. The Committee believes that this would encourage application by would-be APICs that would serve Native Americans. Any such applicant would still need to meet all of the requirements for licensing contained in this bill. Native Americans should not be unintentionally excluded from benefiting under this program.

The Committee notes that under Section 305(b)(1) of the legislation, an APIC applicant must be a for-profit entity in order to be licensed as an APIC. The Committee notes that this is not intended to exclude for-profit entities controlled by non-profit organizations, such as through a subsidiary, partnership, or limited liability structure.

Regarding the application of federal securities laws to APICs, and for that matter to New Market Venture Capital companies ("NVCCs") created under other provisions of the Administration's New Markets Initiative, the Committee notes that nothing in this legislation alters or affects any Federal securities laws or regulations promulgated under the Federal securities laws. Further, federal securities laws continue to apply to NVCCs and APICs created under this legislation, to any securities issued by or on behalf of NVCCs or APICs, and to their distribution. NVCCs and APICs may seek to qualify for certain exclusions contained in the Investment Company Act. Notably, in order for NVCCs and APICs to qualify for the exclusion from regulation under the Investment Company Act provided by Section 3(c)(7) of the Act, they must make only a private offering of their securities and each of their investors must meet the definition of "qualified purchaser" in Section 2(a)(51) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(51). The Committee expects that private offerings of NVCC and APIC securities (including those relying on the exclusion from regulation under the Act provided by Section 3(c)(1)) generally will entail an evaluation of whether the NVCC or APIC securities are suitable investments for the proposed investors.

Ensuring HUD's capacity to administer the APIC program

The Committee was concerned with HUD's current capacity to administer the proposed APIC program. While the Committee notes that the Secretary has made great efforts to improve the management of HUD's programs, there are still many areas which require attention. Adding another program to those already administered by HUD, and especially one as complex in terms of the re-

quired financial expertise as the program envisioned by this legislation, called for careful, bipartisan consideration. An alternative approach, which was indeed debated during the Committee's markup of the legislation, was for the program to be administered by the Department of the Treasury rather than HUD. A crucial reason for having HUD administer the program, however, was the Department's experience in dealing with distressed areas and with complex, large-scale community development investments, in particular. In order to address the Committee's concerns regarding capacity and taxpayer safeguards, key changes to the original legislation were made by the Managers' Amendment regarding program administration.

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

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

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

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

The Committee met in open session to mark up H.R. 2848, "New Markets Initiative Act of 1999" on April 12, 2000. The Committee considered H.R. 2848, as introduced, as the text for purposes of amendments.

During the markup, the Committee approved one amendment, by unanimous consent, which inserted in lieu thereof the provisions of H.R. 2764 as amended and ordered reported by the Committee on April 12, 2000. With a quorum present, a motion to adopt H.R. 2848 and favorably report the bill, as amended, to the House was approved by voice vote.

COMMITTEE OVERSIGHT FINDINGS

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

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

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

CONSTITUTIONAL AUTHORITY

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

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COSTS ESTIMATE AND UNFUNDED
MANDATE ANALYSIS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 2000.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2848, the New Markets Initiative Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Lanette Keith (for federal costs), and Victoria Heid Hall (for the state and local impact).

Sincerely,

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

Enclosure.

H.R. 2848—New Markets Initiative Act of 1999

Summary: H.R. 2848 would provide credit assistance and tax credits in exchange for private investments in certain communities. The bill would authorize appropriations for two federal loan guarantee programs: the America's Private Investment Companies (APIC) program within the Department of Housing and Urban Development (HUD) and a New Markets Venture Capital (NMVC) program within the Small Business Administration (SBA). In both cases, the federal government would guarantee loans made to venture-capital corporations that agree to operate in low-income or moderate-income communities. The NMVC investments would be targeted to small businesses and start-up companies. Other provisions would modify SBA's general business program by reducing fees for certain loan guarantees and increasing the limit on the portion of a loan that can be guaranteed by the government. Finally, the bill would establish a new tax credit for taxpayers who invest in qualified community development entities.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2848 would cost \$1.4 billion over the 2000–2005 period, including revenue losses from the new tax credits. The Joint Committee on Taxation (JCT) estimates that the revenue loss associated with this legislation would be \$1,061 million over the 2000–2005 period and \$1.781 million over the 2000–2010 period. CBO estimates that costs to be paid from appropriated funds would total \$338 million from 2000 through 2005. We also estimate that provisions modifying the terms of existing loans would increase direct spending by \$45 million in 2000. Because H.R. 2848 would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 2848 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of the mandates would not be significant. The legislation does not contain any new private-sector mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2848 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 450 (community development).

| | By fiscal year, in millions of dollars— | | | | | |
|--|---|------|------|------|------|------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Authorization Level | 17 | 86 | 85 | 78 | 79 | 43 |
| Estimated Outlays | 1 | 42 | 68 | 75 | 78 | 74 |
| CHANGES IN DIRECT SPENDING | | | | | | |
| Estimated Budget Authority | 45 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 45 | 0 | 0 | 0 | 0 | 0 |

| | By fiscal year, in millions of dollars— | | | | | |
|--------------------------|---|------|-------|-------|-------|-------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
| CHANGES IN REVENUES | | | | | | |
| Estimated Revenues | - 5 | - 30 | - 119 | - 234 | - 322 | - 351 |

Basis of estimate: For this estimate, CBO assumes H.R. 2848 will be enacted in fiscal year 2000 and that the amounts authorized will be appropriated for each year. CBO expects outlays to follow trends for similar programs.

The majority of the discretionary costs associated with this bill would result from implementing the APIC and NMVC programs. For each year over the 2000–2004 period, the bill would authorize the appropriation of \$36 million to cover the subsidy costs of the APIC program and \$1 million annually for related administrative expenses. The NMVC program would be authorized for six years (fiscal years 2000 through 2005), with appropriations limited to \$30 million for technical assistance and such sums as necessary to subsidize and administer up to \$100 million in NMVC loan guarantees. H.R. 2848 also would increase the cost of guaranteeing new business loans by an average of \$35 million a year, assuming the program is extended beyond 2000. The estimated increase in direct spending reflects the cost of modifying the fees paid on outstanding general business loan guarantees made by SBA. Finally, JCT estimates that the new tax credit for qualified community development entities would reduce revenues by \$1,061 million over the 2000–2005 period and \$1.781 million over the 2000–2010 period.

Spending subject to appropriation

The majority of the discretionary costs associated with H.R. 2848 would be for credit subsidies. The Federal Credit Reform Act of 1990 requires appropriation of the subsidy costs and administrative costs for operating credit programs. The subsidy cost is the estimated long-term cost to the government of a direct loan or loan guarantee, calculated on a net present value basis, excluding administrative costs. In fiscal year 2000, the Congress appropriated a total of \$35 million for subsidy and other costs related to the proposed APIC and NMVC programs.

America's Private Investment Companies. CBO estimates that H.R. 2848 would authorize an additional \$17 million for APIC activities in fiscal year 2000 and \$38 million a year over the 2001–2004 period. (The current appropriation for 2000 is \$20 million.) This annual sum includes the \$36 million specified in the bill for subsidy costs and an estimated \$2 million for administrative expenses. While the bill would authorize the appropriation of \$1 million annually over the 2000–2004 period for administrative costs, CBO estimates this amount would not be sufficient to administer these loan guarantees after fiscal year 2000. Based on the operation of similar SBA programs, we estimate that about \$2 million annually would be needed to administer the APIC loan guarantees over the 10-year term of the guarantees.

New Markets Venture Capital program. CBO estimates that H.R. 2848 would authorize the appropriation of an additional \$40 million over the 2001–2005 period for the NMVC program. This cost reflects the difference between the total amounts authorized in the bill and the \$15 million appropriated for the current year. Specifi-

cally, H.R. 2848 would authorize the appropriation of up to \$30 million over the 2000–2005 period for technical assistance, which is \$21 million more than has been appropriated for fiscal year 2000. Likewise, CBO estimates that it would cost about \$20 million to subsidize \$100 million in NMVC loan guarantees, which is \$14 million more than was appropriated for NMVC subsidies in fiscal year 2000. Finally, experience with other SBA programs suggests that it would cost an average of about \$1 million a year to administer the program, net of any examination fees paid by borrowers.

CBO estimates that the subsidy cost of the NMVC program would be about 20 percent of the amount guaranteed. We based this estimate on defaults and recoveries for similar SBA programs and on information regarding the likely terms and conditions of the guarantees. Experience with other programs suggests that NMVC borrowers would default on about 45 percent of guaranteed loans. In the event of a default, CBO expects that the agency would liquidate the NMVC investments and that recoveries would average about 50 percent of the loan balance three years after default. Information from the Office of Management and Budget (OMB) suggests that SBA would allow borrowers a grace period of five years during which they would not pay interest; instead, such interest would be added to the outstanding debt. Because H.R. 2848 would authorize SBA to guarantee up to \$100 million of loans, we estimate that this program would require the appropriation of about \$20 million for credit subsidies.

SBA's general business loan guarantee program. CBO estimates that provisions modifying certain aspects of SBA's existing general business program would increase the subsidy rate for those guaranteed loans by between 0.25 percent and 0.5 percent. Under H.R. 2848, certain borrowers would pay a smaller up-front fee for guaranteed loans (reduced from 3 percent to 2 percent); some would pay lower annual fees on guaranteed loans (reduced from 0.5 percent to 0.3 percent); and some would be eligible to have the federal government guarantee a higher portion of the loan (up to 80 percent from the current limit of 75 percent).

Assuming that the general business program is extended beyond 2000 at the \$10 billion loan level specified in the fiscal year 2000 appropriation act, CBO estimates that those modifications would require the appropriation of an additional \$35 million a year. The modifications also would affect the subsidy cost of any loans guaranteed in the months remaining in fiscal year 2000 after enactment of the bill, but we assume that any increase in the subsidy cost of new commitments in fiscal year 2000 would lead to a reduction in the volume of loan obligations rather than additional appropriations.

Direct spending

In addition to its effects on future discretionary spending, CBO estimates that reducing the annual fee on loans guaranteed under SBA's general business program would increase direct spending by a total of \$45 million in 2000. H.R. 2848 would reduce the annual fee on guaranteed loans from 0.5 percent to 0.3 percent of the outstanding balance on loans that were originally for \$150,000 or less. This change would modify the expected cost of the guarantees SBA has provided for existing loans under the general business pro-

gram. According to OMB's Circular A-11, Preparation and Submission of Budget Estimates, "If the modification is mandated in legislation, the legislation itself provides the budget authority to incur the subsidy cost obligation (whether explicitly stated or not)." CBO estimates that this provision would increase the subsidy rate by an average of about 1 percent on \$4.5 billion of outstanding loans at the end of 2000.

Revenues

H.R. 2848 would establish a new tax credit for up to 6 percent of the amount taxpayers invest in a qualified community development entity. The Joint Committee on Taxation expects that these provisions would result in an increase in tax-exempt financing and a subsequent loss of federal revenue. JCT estimates that the revenue loss would be \$1,061 million over the 2000-2005 period and \$1,781 million over the 2000-2010 period.

This bill also would provide for civil penalties against APICs that fail to comply with regulations that would be established under H.R. 2848. Payments of these civil penalties would be recorded as governmental receipts to the Treasury. CBO expects that any increase in penalty collections as a result of this provision would not be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

| | By fiscal year in millions of dollars— | | | | | | | | | | |
|---------------------------|--|------|------|------|------|------|------|------|------|------|------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
| Changes in outlays | 45 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Changes in receipts | -5 | -30 | -119 | -234 | -322 | -351 | -331 | -240 | -122 | -31 | 4 |

Estimated impact on state, local, and tribal governments: Title I would preempt state laws by prohibiting states from limiting SBA's ability to exercise its ownership rights in certain debentures issued by a New Markets Venture Capital company. Title III would preempt state laws with regard to the seniority of debt issued by APICs. Such preemptions of state law are intergovernmental mandates as defined in UMRA, but CBO estimates that these mandates would impose no significant costs on state, local, or tribal governments.

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

Estimated impact on the private sector: H.R. 2848 contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Mark Hadley and Lanette Keith; Impact on State, Local, and Tribal Governments: Victoria Heid Hall; Impact on the Private Sector: Patrice Gordon.

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

CONGRESSIONAL BUDGET OFFICE COSTS ESTIMATE

The cost estimate pursuant to Clause 2(l)(3)(C) of rule XI, of the Rules of the House of Representatives and Section 403 of the Congressional Budget Act of 1974 has been requested, but had not been prepared as of the filing of Part I of this report. The estimate will be included in Part II of this report to be filed at a future date.

ADVISORY COMMITTEE STATEMENT

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

CONGRESSIONAL ACCOUNTABILITY ACT

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

SECTION-BY-SECTION OF COMMITTEE AMENDMENT

Section 301. Short title

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

Section 302. Findings and purpose

Section 302 finds that: (1) people living in distressed areas, both urban and rural, characterized by high levels of joblessness, poverty, and low incomes, have not adequately benefited from economic expansion experienced by the Nation as a whole; (2) the costs of joblessness and poverty to our Nation are very high; and (3) there are significant untapped markets in our Nation, and many of these are in areas that are underserved by institutions that can make equity and credit investments.

Purposes of this title are to: (1) license private for-profit community development entities that will focus on making equity and credit investments for large-scale business developments that benefit low-income communities; (2) provide credit enhancement for those entities for use in low-income communities; and (3) provide a vehicle under which the economic and social returns on financial investments made pursuant to this Act may be available both to the investors in these entities and to the residents of the low-income communities.

Section 303. Definitions

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

Section 304. Authorization

Authorizes the Secretary of HUD to license and regulate America's Private Investment Companies ("APICs"). The number of

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

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

Section 305. Selection of APICs

Establishes procedures for selection of APICs, sets forth minimum eligibility requirements, and sets forth selection criteria to be used by the Secretary in selecting among applicants for licensing as APICs. An entity applying for an APIC license must: (1) be a private, for-profit entity that qualifies as a “community development entity” as defined in the legislation; (2) have a minimum private equity capital of \$25 million; (3) have qualified financial management, with experience in direct equity investment and portfolio management and expertise in community development settings, as determined by the Secretary; (4) be structured to preclude financial conflict of interests between the APIC and its managers or investors; (5) submit an investment strategy with evaluation benchmarks; (6) submit a statement of public purpose goals, examples of which are delineated in the statute; (7) agree to comply with other federal requirements imposed from time to time (i.e., Executive Orders or OMB circulars); and (8) satisfy any other application criteria that the Secretary may impose by regulation or notice.

The Secretary shall select eligible entities for licensing based on a competition. Selections shall be made on the basis of the extent to which the entity is expected to meet or exceed the selection criteria set forth in the legislation. Selection criteria include factors such as the APICs capacity, investment strategy, public purpose goals, and other criteria the Secretary may establish to carry out the purposes of this Act. To the extent practicable, in selecting APICs the Secretary shall strive for geographic diversity and a diversity of the types of APICs chosen so that both rural and urban

communities are served by the program. Of those APICs selected in the first year, at least one must be devoted primarily to making investments on Native American lands.

Section 306. Operations of APICs

Sets forth requirements for the operation of APICs. Requires that substantially all APIC investments that use government-guaranteed proceeds be in qualified low- to moderate-income (LMI) areas, and prohibits an APIC from having an investment in any one business that would amount to more than 35% of the APIC's equity capital plus the limit of outstanding debt allowable (the leverage limit) under Section 306(c)(2) of this title.

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

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

Section 307. Credit enhancement by the Federal Government

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

Section 308. APIC requests for guarantee actions

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

Section 309. Examination and monitoring of APICs

Requires that the Secretary examine and monitor the activities of APICs for compliance with sound financial management practices and for satisfaction of program goals. Requires the Secretary to establish annual or more frequent reporting requirements for APICs. Requires that each APIC have an independent annual audit conducted annually. The Secretary, in consultation with the Ad-

administrator of the SBA and the Secretary of the Treasury, shall establish requirements and standards for such audits. Not less than every two years, the Secretary shall examine the operations and portfolio of each APIC to assure compliance with sound financial management practices.

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

Section 310. Penalties

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

Section 311. Effective date

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

Section 312. Sunset

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SMALL BUSINESS INVESTMENT ACT OF 1958

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

* * * * *

TITLE III—[SMALL BUSINESS INVESTMENT COMPANIES]
INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

SEC. 301. * * *

* * * * *

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 350. DEFINITIONS.

In this part—

(1) the term “New Markets Venture Capital company” means a company that—

(A) has been approved by the Administration under section 353(e) to operate under the New Markets Venture Capital Program; and

(B) has entered into a participation agreement with the Administration; and

(2) the term “low- or moderate-income geographic area” means—

(A) a census tract, or the equivalent county division as defined by the Bureau of the Census for purposes of defining poverty areas, in which—

(i) the poverty rate is not less than 20 percent; or

(ii) in the case of a census tract or division located within a metropolitan area, the median family income for such tract or division does not exceed the greater of 80 percent of the statewide median family income or 80 percent of the metropolitan-area median family income; or

(iii) in the case of a census tract or division not located within a metropolitan area, the median family income for such tract or division does not exceed 80 percent of the statewide median family income; and

(B) any area located within—

(i) a HUBZone (as defined in section 126.103 of title 13, Code of Federal Regulations);

(ii) an Urban Empowerment Zone or an Urban Enterprise Community, as designated by the Secretary of the Department of Housing and Urban Development; or

(iii) a rural Empowerment Zone or a Rural Enterprise Community, as designated by the Secretary of the Department of Agriculture; and

(3) the term “participation agreement” means an agreement between the Administration and a New Markets Venture Capital company—

(A) detailing the company’s operating plan and investment criteria; and

(B) requiring that investments be made in smaller enterprises at least 60 percent of which are located in low- or moderate-income geographic areas.

SEC. 351. PURPOSES.

The purposes of the New Markets Venture Capital Program are—

(1) to encourage venture capital investment in smaller enterprises located in urban and rural areas; and

(2) to establish a venture capital program to be administered by the Small Business Administration—

(A) to enter into a participation agreement with New Markets Venture Capital companies;

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make venture capital investments in smaller enterprises in urban and rural areas; and

(C) to make grants to New Markets Venture Capital companies for the purpose of providing marketing, management, and technical assistance to smaller enterprises financed, or expected to be financed, by such company.

SEC. 352. ESTABLISHMENT OF PROGRAM.

The Administration shall establish a New Markets Venture Capital Program, under which the Administration may—

(1) enter into a participation agreement with each New Markets Venture Capital company for the purposes set forth in section 351;

(2) guarantee debentures issued by each New Markets Venture Capital company as provided in section 354; and

(3) make grants to each New Markets Venture Capital company as provided in section 355.

SEC. 353. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

(a) **ELIGIBILITY.**—A company shall be eligible for participation in the New Markets Venture Capital Program if—

(1) it is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity; and

(2) it has a management team with experience in community development financing or venture capital financing.

(b) **APPLICATION.**—To participate in the New Markets Venture Capital Program, an eligible company shall submit an application to the Administration that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in low- or moderate-income geographic areas;

(2) information regarding the qualifications of the company's management;

(3) a description of how the company intends to work with community organizations;

(4) a description of how the company will use the grant funds provided under this part to provide marketing, management, and technical assistance to smaller enterprises;

(5) a description of the criteria the company will use to evaluate whether and to what extent it meets the objectives of the program established under this part;

(6) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and

(7) such other information as the Administration may require.

(c) **CONDITIONAL APPROVAL.**—

(1) *IN GENERAL.*—From among companies submitting applications under subsection (b), the Administration shall in accordance with this subsection conditionally approve companies to participate in the New Markets Venture Capital Program.

(2) *SELECTION CRITERIA.*—In selecting companies under paragraph (1), the Administration shall consider the following:

(A) The likelihood that the applicant will meet the goals of its business plan.

(B) The experience and background of the company's management team.

(C) The need for equity investments in the areas in which the company intends to invest.

(D) The extent to which the company will concentrate its activities on serving the areas in which it intends to invest.

(E) The likelihood that the company will be able to satisfy the conditions under subsection (d).

(F) The extent to which the activities proposed by the company will expand economic opportunities in the areas in which the company intends to invest.

(G) Any other factors deemed appropriate by the Administration.

(3) *NATIONWIDE DISTRIBUTION.*—In selecting companies under paragraph (1), the Administration shall ensure that companies are chosen in such a way that investments under the New Markets Venture Capital Program will be made nationwide.

(d) *CONDITIONS TO BE MET FOR FINAL APPROVAL.*—The Administration shall give each conditionally approved company a period of time, not to exceed 24 months, to satisfy the following conditions:

(1) *CAPITAL REQUIREMENT.*—Each conditionally approved company must raise not less than \$5,000,000 of contributed capital or binding capital commitments from 1 or more investors (other than an agency of the Federal Government) who meet criteria established by the Administration; and

(2) *NON-ADMINISTRATION RESOURCES FOR TECHNICAL ASSISTANCE.*—

(A) *IN GENERAL.*—In order to provide marketing, management, and technical assistance, each conditionally approved company must—

(i) have binding commitments (in cash or in-kind)—

(I) from any sources other than the Administration that meet criteria established by the Administration:

(II) payable or available over a multiyear period acceptable to the Administration (not to exceed 10 years); and

(III) in an amount equal to 30 percent of the capital and commitments raised under subsection (d)(1); or

(ii) must have purchased an annuity—

(I) from an insurance company acceptable to the Administration;

(II) using funds (other than the funds raised to satisfy subsection (d)(1)) from any source other than the Administration; and

(III) that yields cash payments over a multiyear period acceptable to the Administration (not to exceed 10 years) in an amount equal to 30 percent of the capital and commitments raised under subsection (d)(1); or

(iii) must have binding commitments (in cash or in-kind) of the type described in subsection (d)(2)(A)(i) and must have purchased an annuity of the type described in subsection (d)(2)(A)(ii), which in the aggregate make available, over a multiyear period acceptable to the Administration (not to exceed 10 years), an amount equal to 30 percent of the capital and commitments raised under subsection (d)(1).

(B) SPECIAL RULE.—On a showing of special circumstances and good cause, the Administrator may with respect to a particular company waive the requirements of subsection (d)(2) if the Administrator considers the company to have a viable business plan that reasonably projects the company's capacity to raise the amount (in cash or in-kind) required under subsection (d)(2)(A).

(e) FINAL APPROVAL.—The Administration shall grant to a conditionally approved company final approval to participate in the New Markets Venture Capital Program as a New Markets Venture Capital company after the company—

(1) has satisfied the conditions under subsection (d); and

(2) has entered into a participation agreement with the Administration.

SEC. 354. DEBENTURES.

(a) IN GENERAL.—The Administration may, to the extent authorized in advance in appropriations Acts, guarantee the timely payment of principal and interest as scheduled on debentures issued by New Markets Venture Capital companies.

(b) TERMS AND CONDITIONS.—The Administration may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States shall be pledged to the payment of all amounts which may be required to be paid under any guarantee under this part.

(d) MAXIMUM GUARANTEE.—The Administration may provide guarantees under this section for the debentures issued by any New Markets Venture Capital company only to the extent that such guarantees do not exceed 150 percent of the contributed capital of the company, as determined by the Administration. Contributed capital shall include capital that is deemed to be Federal funds contributed by an investor other than an agency of the Federal Government.

SEC. 355. TECHNICAL ASSISTANCE GRANTS.

(a) IN GENERAL.—

(1) AUTHORITY.—In accordance with this section, the Administration may make grants to each New Markets Venture Capital company to provide marketing, management, and technical assistance for the benefit of smaller enterprises financed, or expected to be financed, by the company.

(2) *TERMS.*—Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administration may require.

(2) *GRANT AMOUNT.*—

(A) *IN GENERAL.*—The amount of a grant made under this subsection to each New Markets Venture Capital company shall be equal to the amount resources raised by the company (in cash or in-kind) under section 353(d)(2).

(B) *SPECIAL RULE.*—Notwithstanding subparagraph (A), the Administration may make a grant under this section in an amount other than that set forth in subparagraph (A), if the Administration considers the grant to be in the best interests of the New Markets Venture Capital Program.

(3) *PRO RATA REDUCTIONS.*—If the amount made available to carry out this section is insufficient for the Administration to provide grants in the amounts provided for in subsection (a)(2), the Administration shall make pro rata reductions in the amounts otherwise payable to each New Markets Venture Capital company under such subsection.

(b) *SUPPLEMENTAL GRANTS.*—

(1) *IN GENERAL.*—The Administration may make supplemental grants to any New Markets Venture Capital company, containing such terms as the Administration may require, to provide additional marketing, management, and technical assistance for the benefit of smaller enterprises financed, or expected to be financed, by the New Markets Venture Capital company.

(2) *MATCHING REQUIREMENT.*—The Administration may require, as a condition of any supplemental grant made under this subsection, that the New Markets Venture Capital company provide from resources (in cash or in-kind) other than those provided by the Administration an amount equal to the amount of the supplemental grant.

SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

(a) *ISSUANCE.*—The Administration may issue trust certificates representing ownership of all or a fractional part of debentures issued by New Markets Venture Capital companies and guaranteed by the Administration under this Act, if such certificates are based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) *GUARANTEE.*—

(1) *IN GENERAL.*—The Administration may, under such terms and conditions as the Administration deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section.

(2) *LIMITATION.*—Guarantees under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool.

(3) *PREPAYMENT OR DEFAULT.*—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted

debentures shall accrue and be guaranteed by the Administration only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) *FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States shall be pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent under this section.*

(d) *FEES.—The Administration shall not collect a fee for any guarantee under this section, but any agent of the Administration may collect a fee approved by the Administration for the functions described in subsection (f)(2) of this section.*

(e) *SUBROGATION AND OWNERSHIP RIGHTS.—*

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

(2) *OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administration of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.*

(f) *MANAGEMENT AND ADMINISTRATION.—*

(1) *REGISTRATION.—*

(A) *IN GENERAL.—The Administration may provide for a central registration of all trust certificates issued under this section.*

(B) *FORMS OF REGISTRATION.—Nothing in this subsection shall prohibit the use of a book entry or other electronic form of registration for trust certificates.*

(2) *CONTRACTING OF FUNCTIONS.—*

(A) *IN GENERAL.—The Administrator may contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—*

(i) *maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this Act; and*

(ii) *the issuance of trust certificates to facilitate the creation of such trusts or pools.*

(B) *PROTECTION OF THE INTERESTS OF THE UNITED STATES.—Any agent performing functions on behalf of the Administration under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the United States.*

(3) *REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates sold under this section.*

SEC. 357. FEES.

Except as provided in section 356(d), the Administration may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

SEC. 358. BANK PARTICIPATION.

(a) IN GENERAL.—To the extent provided for in subsection (b), any national bank, any member bank of the Federal Reserve System, and any bank that is not a member of such system but which is insured to the extent permitted under applicable State law, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) LIMITATION.—No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

SEC. 359. FEDERAL FINANCING BANK.

Section 318 shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

SEC. 360. REPORTING REQUIREMENTS.

Each New Markets Venture Capital company shall provide to the Administration such information as the Administration may require, including information on the measurement criteria that the New Markets Venture Capital company proposed in its program application.

SEC. 361. EXAMINATIONS.

(a) IN GENERAL.—Each New Markets Venture Capital company shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations.

(c) COSTS.—

(A) IN GENERAL.—The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) DEPOSIT OF FUNDS.—Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

(C) AUTHORIZATION OF APPROPRIATIONS.—Funds deposited under subparagraph (B) are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.

SEC. 362. INJUNCTIONS AND OTHER ORDERS.

(a) IN GENERAL.—Whenever, if the Administrator considers that a New Markets Venture Capital company, or any other person, has engaged or is about to engage in any acts or practices which constitute, or will constitute, a violation of any provision of this Act, of any rule or regulation under this Act, or of any order issued under this Act, the Administration may make application to the proper district court of the United States or to a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance

with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) *SEIZING OF ASSETS.*—In any such proceeding the court, as a court of equity may, to the extent it deems necessary, take exclusive jurisdiction of the New Markets Venture Capital company and the assets thereof, wherever located. The court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) *ADMINISTRATION AS TRUSTEE OR RECEIVER.*—

(1) *IN GENERAL.*—The Administration may act as trustee or receiver under subsection (b) of a New Markets Venture Capital company.

(2) *APPOINTMENT.*—At the request by the Administration, the court may appoint the Administration to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate.

SEC. 363. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY.

(a) *PARTIES DEEMED TO COMMIT A VIOLATION.*—Whenever an New Markets Venture Capital company violates any provision of this Act, or any regulation issued thereunder, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) *FIDUCIARY DUTIES.*—It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct or the affairs of an New Markets Venture Capital company to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the New Markets Venture Capital company has suffered or is in imminent danger of suffering financial loss or other damage.

(c) *UNLAWFUL ACTS.*—Except with the written consent of the Administration, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of an New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of an New Markets Venture Capital company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) the person has been found civilly liable in damages, or has been permanently or temporarily enjoined by order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) the person found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(d) REMOVAL OR SUSPENSION.—

(1) IN GENERAL.—As provided in section 313, the Administration may remove or suspend any person upon whom the Administration has served a notice under this subsection.

(2) NOTICE.—The Administration may serve upon any person who is an officer, director, or employee of a New Markets Venture Capital company, or an agent or participant in the conduct of the affairs or management of the company, a written notice of the Administration's intention to remove or suspend such person from the person's office or position, if in the opinion of the Administration, such person—

(A) has willfully and knowingly committed any substantial violation of—

(i) this Act,

(ii) any regulation issued under this Act, or

(iii) a cease-and-desist order which has become final,

or

(B) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty, and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such person.

SEC. 364. REGULATIONS.

The Administration is authorized to issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

SEC. 365. AUTHORIZATION OF APPROPRIATIONS.

For fiscal years 2000 through 2005, the Administration is authorized to be appointed such subsidy budget authority as may be necessary to guarantee up to \$100,000,000 of debentures, and up to \$30,000,000 to make technical assistance grants, for the purposes of this part, to remain available until expended. This authority shall be in effect for the period commencing with fiscal year 2000 through fiscal year 2005.

* * * * *

SECTION 109 OF TITLE 11, UNITED STATES CODE

§ 109. Who may be a debtor

(a) * * *

* * * * *

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

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a *New Markets Venture Capital company as defined in section 350 of the Small Business Investment Act of 1958*, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, *America's Private Investment Company licensed under the America's Private Investment Companies Act*, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

(3) * * *
 * * * * *

SECTION 5 OF THE HOME OWNERS' LOAN ACT

SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

(a) * * *
 * * * * *

(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) * * *
 * * * * *

(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

(A) * * *
 * * * * *

(F) NEW MARKETS VENTURE CAPITAL COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any New Markets Venture Capital company as defined in section 350 of the Small Business Investment Act of 1958, except that a Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 5 percent of the capital and surplus of such savings association.

* * * * *

SECTION 7 OF THE SMALL BUSINESS ACT

SEC. 7. (a) LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly

or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) * * *

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds ~~【\$100,000】~~ \$150,000; or

(ii) 80 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to ~~【\$100,000】~~ \$150,000.

* * * * *

(18) GUARANTEE FEES.—

(A) * * *

(B) EXCEPTION FOR CERTAIN LOANS.—Notwithstanding subparagraph (A), if the total deferred participation share of a loan guaranteed under this subsection is less than or equal to ~~【\$80,000】~~ \$120,000, the guarantee fee collected under subparagraph (A) shall be in an amount equal to 2 percent of the total deferred participation share of the loan.

* * * * *

(23) ANNUAL FEE.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan~~【.】~~, *except that with respect to each loan of less than \$150,000 guaranteed under this subsection, the Administration shall assess and collect an annual fee in an amount equal to 0.3 percent of the outstanding balance of the deferred participation share of the loan.*

* * * * *

SECTION 12 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT

SEC. 12. (a) * * *

* * * * *

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

(1) * * *

(2) ASSISTANCE.—The term “assistance” means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by stat-

ute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary or any license provided under the America's Private Investment Companies Act.

* * * * *

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter A—Determination of tax liability

* * * * *

PART IV—CREDITS AGAINST TAX

* * * * *

Subpart D—Business Related Credits

Sec. 38. General business credit.

* * * * *

Sec. 45D. New markets tax credit.

* * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

(b) **CURRENT YEAR BUSINESS CREDIT.**—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) * * *

* * * * *

(11) the employer social security credit determined under section 45B(a), **[plus]**

(12) the orphan drug credit determined under section 45C(a)**[.]**, *plus*

(13) *the new markets tax credit determined under section 45D(a).*

* * * * *

SEC. 39. CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.

(a) * * *

* * * * *

(d) **TRANSITIONAL RULES.**—

(1) * * *

* * * * *

(9) *NO CARRYBACK OF NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2000.*—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45D may be carried back to a taxable year ending before January 1, 2000.

* * * * *

SEC. 45D. NEW MARKETS TAX CREDIT.

(a) **ALLOWANCE OF CREDIT.**—

(1) *IN GENERAL.*—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to 6 percent of the amount paid to the qualified community development entity for such investment at its original issue.

(2) *CREDIT ALLOWANCE DATE.*—The term “credit allowance date” means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 4 anniversary dates of such date thereafter.

(b) **QUALIFIED EQUITY INVESTMENT.**—For purposes of this section—

(1) *IN GENERAL.*—The term “qualified equity investment” means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) *LIMITATION.*—The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) *SAFE HARBOR FOR DETERMINING USE OF CASH.*—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) *TREATMENT OF SUBSEQUENT PURCHASERS.*—The term “qualified equity investment” includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) *REDEMPTIONS.*—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) *EQUITY INVESTMENT.*—The term “equity investment” means—

(A) any stock in a qualified community development entity which is a corporation, and

(B) any capital interest in a qualified community development entity which is a partnership.

(c) *QUALIFIED COMMUNITY DEVELOPMENT ENTITY.*—For purposes of this section—

(1) *IN GENERAL.*—The term “qualified community development entity” means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through representation on governing or advisory boards or otherwise, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) *SPECIAL RULES FOR CERTAIN ORGANIZATIONS.*—The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) *QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS.*—For purposes of this section—

(1) *IN GENERAL.*—The term “qualified low-income community investment” means—

(A) any equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another community development entity of any loan made by such entity which is a qualified low-income community investment if the amount received by such other entity from such purchase is used by such other entity to make qualified low-income community investments,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity if substantially all of the investment or loan is used by such entity to make qualified low-income community investments described in subparagraphs (A), (B), and (C).

(2) *QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.*—

(A) *IN GENERAL.*—For purposes of paragraph (1), the term “qualified active low-income community business” means, with respect to any taxable year, any corporation or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397B(e)).

(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.—The term “qualified active low-income community business” includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term “qualified business” has the meaning given to such term by section 1397B(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property,

(B) paragraph (3) thereof shall not apply, and

(C) such term shall not include any business if a significant portion of the equity interests in such business are held by any person who holds a significant portion of the equity investments in the community development entity.

(e) LOW-INCOME COMMUNITY.—For purposes of this section—

(1) IN GENERAL.—The term “low-income community” means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent,

or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income,

or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

(2) *AREAS NOT WITHIN CENSUS TRACTS.*—*In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.*

(f) *NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.*—

(1) *IN GENERAL.*—*There is a new markets tax credit limitation of \$1,200,000,000 for each of calendar years 2000 through 2004.*

(2) *ALLOCATION OF LIMITATION.*—*The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to entities with records of having successfully provided capital or technical assistance to disadvantaged businesses or communities.*

(3) *CARRYOVER OF UNUSED LIMITATION.*—*If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess.*

(g) *RECAPTURE OF CREDIT IN CERTAIN CASES.*—

(1) *IN GENERAL.*—*If, at any time during the 5-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.*

(2) *CREDIT RECAPTURE AMOUNT.*—*For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—*

(A) *the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus*

(B) *interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.*

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) *RECAPTURE EVENT.*—*For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—*

(A) *such entity ceases to be a qualified community development entity,*

(B) *the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or*

(C) *such investment is redeemed by such entity.*

(4) *SPECIAL RULES.*—

(A) *TAX BENEFIT RULE.*—*The tax for the taxable year shall be increased under paragraph (1) only with respect to*

credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the provisions of this section through the use of related parties,

(3) which impose appropriate reporting requirements, and

(4) which apply the provisions of this section to newly formed entities.

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Subchapter B—Computation of Taxable Income

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * *

SEC. 196. DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.

(a) * * *

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(c) **QUALIFIED BUSINESS CREDITS.**—For purposes of this section, the term “qualified business credits” means—

(1) * * *

* * * * *

(7) the Indian employment credit determined under section 45A(a), **[and]**

(8) the employer Social Security credit determined under section 45B(a)**[.], and**

(9) the new markets tax credit determined under section 45D(a).

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