

NEW MARKETS VENTURE CAPITAL PROGRAM ACT OF 2000

JULY 25, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TALENT, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 4530]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 4530) to amend the Small Business Investment Act of 1958 to direct the Administrator of the Small Business Administration to establish a New Markets Venture Capital Program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 4530, the “New Markets Venture Capital Program Act of 2000,” is to promote economic development, wealth and job opportunities in low- and moderate-income (LMI) areas by encouraging venture capital investments and offering technical assistance to small enterprises. The central goal of the legislation is to fulfill the unmet equity investment needs of small enterprises primarily located in LMI areas.

The bill creates a developmental venture capital program by amending the Small business Investment Act to authorize the U.S. Small Administration (SBA) to enter into participation agreements with 10 to 20 New Markets Venture Capital (NMVC) companies in a public/private partnership. It further authorizes SBA to guarantee debentures of NMVC companies to enable them to make venture capital investments in smaller enterprises in LMI areas. And it authorizes SBA to make grants to NMVC companies, and to other entities, for the purpose of providing technical assistance to smaller enterprises that are financed, or expected to be financed, by such-companies.

H.R. 4530 also enhances the ability of existing Small Business Investment Companies (SBICs) to invest in LMI areas. It allows them to have access to the leverage capital authorized under the program, without entering into a participation agreement with SBA to act as an NMVC company.

Finally, H.R. 4530 enhances the ability of existing Specialized Small Business Investment Companies (SSBICs) to invest in LMI areas. It allows them to have access to the operational assistance grant funds authorized under the program, also without entering into a participation agreement with SBA to act as an NMVC company.

NEED FOR LEGISLATION

Despite our unprecedented economic prosperity, there remain places in America that have yet to reap the benefits of this prosperity. Although many Americans enjoy strong income and wage growth, millions in underserved areas still do not have access to jobs or entrepreneurial opportunities.

For example, between 1997 and 1998, the median income for the nation's households rose 3.5 percent in real terms. Yet 12.7 percent of Americans (34.5 million people) still live below the poverty level. These 34.5 million people live in the inner cities and rural areas of America, where jobs are scarce and there is little to attract would-be small business investors.

The overall poverty rate for the U.S. in 1998 was 12.7 percent, but the poverty rate among both African American and Latino populations was 26 percent—double the national average. In rural communities, poverty remains a persistent problem. Job growth is well below the national average, with unemployment hovering at or above 14%. Additionally, the unemployment levels in many urban communities range from 7.5% for African Americans to 6.4% for Hispanics. Both are nearly double the national average.

It is not enough to merely create jobs in these pockets of poverty. Rather, we must create a small business backbone, an economic infrastructure to enable these communities to develop their full potential and participate fully in the economic mainstream.

H.R. 4530 uses SBA resources targeted to corporations and small businesses that want to do business in the untapped markets of our underserved communities. It is a wise investment in the hopes of millions of families who are not sharing in the American Dream.

There is a pressing need for this legislation. There are virtually no institutional sources of equity capital in distressed communities. The national venture capital industry for community development comprises only 25 firms managing approximately \$157 million. Only 14 of those are capitalized at \$5 million or more—the absolute minimum for economic viability.

H.R. 4530 will tap unrealized resources in our nation, thus benefiting our economy as a whole. It will increase the attractiveness of investment in places with high unemployment and too few businesses. The more the business community knows about these new markets, the more likely they will invest in them—and the more businesses that invest in these new markets, the more these areas will share in our nation's economic prosperity. This legislation provides a road map for the next generation to succeed, and it makes good sense from both a public policy and business standpoint.

COMMITTEE ACTION

The Committee on Small Business held no separate hearings on H.R. 4530. During the committee's hearing on the Reauthorization of the Small Business Administration programs and the Agency's Fiscal Year 2001 Budget Request held on March 1, 2000, SBA Administrator Alvarez outlined the Agency's position on the New Markets Venture Capital Program. The Administrator's statement included reference to SBA's request for \$21.6 million in budget authority to support a \$150 million program level, and an additional \$30 million for technical assistance for the NMVC Program.

Administrator Alvarez went on to discuss the absence of equity-type venture capital in America's distressed communities and cited SBA's own analysis of community development venture capital companies which indicates that one direct job is created for each \$10,000–\$15,000 of equity investment.

Finally, the Administrator indicated that SBA's calculations concerning the cost of the program were conducted using the most conservative assumptions; therefore, SBA believes the cost will go down as they develop more experience with this new program.

CONSIDERATION OF H.R. 4530

At 10:00 a.m. on May 25, 2000, the Committee on Small Business met to consider and report H.R. 4530. Following brief opening statements by the Chairman and the Ranking Democratic Member, the Chairman declared the bill open for amendment.

No amendments were offered. Chairman Talent then moved the bill be reported, and at 10:25 a.m., by unanimous voice vote, a quorum being present, the Committee passed H.R. 4530 and ordered it reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Designates the bill as the "New Markets Venture Capital Program Act of 2000."

Section 2. New Markets Venture Capital Program

This Section amends Title III of the Small Business Investment Act of 1958 by adding new Sections 351 through 368 to establish the "New Markets Venture Capital Program."

H.R. 4530 will add the following new sections to the Small Business Investment Act:

SEC. 351. DEFINITIONS.

Establishes definitions for developmental venture capital, New Markets Venture Capital Companies, low- or moderate-income geographic area, operational assistance, participation agreement, and Specialized Small Business Investment Companies as used in the legislation.

"Developmental venture capital" is defined as equity capital invested in businesses, with a primary objective of fostering economic development in low- or moderate-income geographic areas. For the purposes of this Act, the Committee considers equity investments to mean stock of any class in a corporation, stock options, warrants, limited partnership interests, membership interests in a lim-

ited liability company, or joint venture interests. Financings containing debt-type acceleration provisions or redemption provisions allowing redemption within five years would be considered debt transactions.

A "New Markets Venture Capital Company" is defined as a company that has been approved by the Administration to operate under the New Markets Venture Capital Program, and has entered into a participation agreement with the Administration to make equity investments and provide technical assistance to small enterprises located in low- or moderate-income areas.

The term "low- or moderate-income geographic area" means a census tract, or the equivalent county division as defined by the Bureau of the Census for purposes of defining poverty areas, in which the poverty rate is not less than 20 percent. This also includes any area located within a HUBZone, an Urban Empowerment Zone or an Urban Enterprise Community, or a rural Empowerment Zone or a Rural Enterprise Community.

The term "operational assistance" is defined as management, marketing, and other technical assistance that assists a small business concern with business development.

"Participation agreement" is defined as an agreement between the Administration and an NMVC Company detailing the company's operating plan and investment criteria; and requiring that investments be made in smaller enterprises at least 80 percent of which are located in low- or moderate-income geographic areas.

"Specialized Small Business Investment Company" means any small business investment company that was licensed under section 301(d) as in effect before September 30, 1996.

SEC. 352. PURPOSES.

Describes the purposes of this Act, which are:

(1) to promote economic development and the creation of wealth and job opportunities in low- or moderate-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small entrepreneurs located in low- or moderate-income areas; to be administered by the Small Business Administration; to enter into a participation agreement with NMVC companies; to guarantee debentures of NMVC companies to enable each such company to make developmental venture capital investments in smaller enterprises in low- or moderate-income geographic areas; and to make grants to NMVC companies for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

SEC. 353. ESTABLISHMENT.

Authorizes the SBA to establish the NMVC Program, under which the SBA may form New Markets Venture Capital companies by entering into participation agreements with firms that are granted final approval under the requirements set forth in Section 354 and formed for the purposes outlined in Section 352.

This Section also authorizes SBA to guarantee the debentures issued by the NMVC Companies as provided in Section 355; and to make operational assistance grants to NMVC Companies and other entities in accordance with Section 358.

SEC. 354. SELECTION OF THE NEW MARKETS VENTURE CAPITAL COMPANIES.

Establishes the criteria to be followed by SBA in selecting the NMVC Companies. This section provides for specific selection criteria to be developed by the SBA—based on the criteria enumerated in this legislation—and designed to ensure that a variety of investment models are chosen and that appropriate public policy goals are addressed. Geographic dispersion must also be taken into account in the selection process.

H.R. 4530 requires Program participants to satisfy the following application requirements:

(1) Each NMVC must be a newly formed, for-profit entity with at least \$5 million of contributed capital or binding capital commitments from non-Federal investors, and with the primary objective of economic development in low- or moderate-income geographic areas.

(2) Each NMVC's management team must be experienced in some form of community development or venture capital financing.

(3) Each NMVC must concentrate its activities on serving its investment areas, and submit a proposal that will expand economic opportunities and address the unmet capital needs within the investment areas.

(4) Each applicant must submit a strong proposal to provide operational assistance, including the possible use of outside, licensed professionals.

(5) Each NMVC must have binding commitments (in cash or in-kind) for operational assistance and overhead, payable or available over a multi-year period not to exceed 10 years, in an amount equal to 30% of its committed and contributed capital. These commitments may be from any non-SBA source and the cash portion may be invested in an annuity payable semi-annually over a multi-year period not to exceed 10 years.

The Committee is well aware that it will be difficult for some NMVCs to raise their entire match during the application stage. Those NMVCs that are unable to raise the required match, but have submitted a reasonable plan to the Administrator to meet the requirement, may be granted a conditional approval from the Administrator and be allowed to draw one dollar of federal matching funds for every dollar of private funds raised. This conditional approval shall be made with the expectation that the required funding commitments will be obtained within two years of the conditional approval.

The Committee believes that it is important to give NMVCs the flexibility to obtain the required private operational assistance funds, however, from a safety and soundness standpoint, federal assistance funds should not be placed at greater risk than private assistance funds.

The bill also authorizes SBA to select firms that have experience with investing in enterprises located in low- or moderate-income areas to participate as NMVCs. SBA will enter into an agreement

with each NMVC setting forth the specific terms of that firm's participation in the program. Each agreement will be tailored to the particular NMVC's operations and will be based on the NMVC's own proposal, submitted as part of the NMVC's application form. The agreement will require that investments be made by the NMVC in smaller enterprises, at least 80% of which are located in low- or moderate-income geographic areas.

In order for an investment to be counted toward the 80% goal under H.R. 4530, the investment must be made in a small business concern located in an LMI area. This ensures that the New Markets Venture Capital Company Program will focus investment capital where it is most needed, rather than duplicating existing SBA programs.

The Committee believes that the targeting of low-income communities is the most important element of H.R. 4530. If congress and the Administration are serious about helping our nation's low-income cities, towns, and rural areas we should demonstrate our commitment by ensuring that this bill is focused on these areas. The Committee has accomplished this by requiring that 80% of all investment will concentrate on those needing this help the most.

By clearly focusing this legislation on the communities that need assistance the most, the Committee has maximized the impact of this program. It is also the Committee's view that by investing the majority of funds in low- or moderate-income communities, we will not only provide the benefit of increased opportunities for working families, but H.R. 4530 will also provide the benefit of improving the physical community. This double benefit ensures that the resources spent under H.R. 4530 will provide the maximum economic impact on the low- or moderate-income communities to which this bill is targeted.

The Committee recognizes that the legislation may offer some benefits to working families located outside of the LMI areas as defined by the legislation. To address this concern, up to 20% of a New markets Venture Capital Company's investments are permitted in those businesses that are in need of equity investment, but fall outside the LMI areas as defined by the legislation. However, it is the Committee's strong opinion that to reduce the targeting below 80% would significantly diminish the impact in the LMI areas, and would be contrary to the intent of the program.

SEC. 355. DEBENTURES.

Authorizes SBA to guarantee debentures issued by NMVC companies. The terms for the guaranteed debentures issued under this section may not exceed 15 years and the maximum total guarantee for any NMVC company shall not exceed 150 percent of a company's private capital.

SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

Authorizes SBA to issue and guarantee trust certificates representing ownership of all or part of the debentures issued by an NMVC company and guaranteed by the Administration. Each guarantee issued under this section is limited to the amount of the principal and interest on the guaranteed debentures that compose the trust or pool of certificates.

This section grants SBA subrogation and ownership rights over the trust certificates guaranteed under this section, but prohibits

SBA from collecting a fee for any guarantee of a trust certificate issued under this section. Finally, this section allows SBA to contract with an agent to carry out the pooling and central registration functions for the trust certificates issued.

SEC. 357. FEES.

Authorizes SBA to charge such fees as it deems appropriate with respect to any guarantee or grant issued to an NMVC company.

This authorization is subject to the prohibition contained in Section 356 that prohibits SBA from collecting a fee for any guarantee of a trust certificate issued under that section.

SEC. 358. OPERATIONAL ASSISTANCE GRANTS.

Authorizes SBA to make operational assistance grants to New Markets Venture Capital Companies established under the legislation and to certain Specialized Small Business Investment Companies.

Each NMVC is eligible for one or more grants, on a matching basis, in an amount equal to the amount the NMVC makes available for operational assistance. The operational assistance grant will be made available to the NMVC semi-annually over a multi-year period not to exceed 10 years. SBA is also authorized to provide supplemental grants to NMVCs.

This section of the bill also allows Specialized Small Business Investigation Companies ("SSBICs") access to the operational assistance grant funds authorized under the program without entering into a participation agreement with SBA to act as an NMVC company. The participation of the SSBICs, however, is limited only to investments they make in LMI areas after the date of enactment, and they must match the operational assistance funds to one LMI investment.

This section of the bill explicitly prohibits NMVCs and SSBICs from using operational assistance grants, both the federal contribution and the match, to supplement their own bottom line. This prohibition includes items that are not aimed at directly benefiting the small enterprises, such as, but not limited to—the purchase of furniture, office supplies, physical improvements to the NMVCs' or SSBICs' places of business, and marketing services. The Committee included this limitation to ensure that the investments made through this program will be for the benefit of small businesses located in LMI areas, which is the intent of the legislation.

It is the Committee's view that this provision does allow for operational assistance funds under the legislation to be used for salaries of those NMVC or SSBIC employees that are providing direct technical assistance to the small enterprise. NMVCs and SSBICs that use their own staff to provide the necessary direct assistance to smaller enterprises may be reimbursed for the direct cost of staff out of grant funds, but only to the extent such costs are allocable to the operational assistance.

This section also requires the NMVC companies to use licensed professionals (e.g., licensed attorneys and Certified Public Accountants) when providing technical assistance that requires such expertise. This ensures that the NMVC companies will provide the best assistance possible to the small business concerns.

Evidence presented to the Committee by the community development venture capital advocates indicates that providing technical

assistance to a small business dramatically increases that business' chance of success. The Committee is taking this one step further by ensuring that all small businesses receiving technical assistance under this program will receive the best technical assistance available. We believe this will further increase the businesses' chances of success.

SEC. 359. BANK PARTICIPATION.

Allows any national bank, and any member bank of the Federal Reserve System to invest in an NMVC company formed under this legislation so long as the investment would not exceed 5 percent of the capital and surplus of the bank.

Banks that are not members of the federal Reserve system are allowed to invest in an NMVC company formed under this legislation so long as such investment is allowed under applicable State law, and so long as the investment would not exceed 5 percent of the capital and surplus of the bank.

SEC. 360. FEDERAL FINANCING BANK.

Establishes that Section 318 of the Small Business Investment Act does not apply to any NMVC Company created under this legislation.

SEC. 361. REPORTING REQUIREMENTS.

Establishes reporting requirements for the NMVC Companies. Specifically, the NMVC companies are required to provide to SBA such information as the Administration requires, including: information related to the measurement criteria that the NMVC proposed in its program application; and, for each case in which the NMVC makes an investment or a grant to a business located outside of an LMI area, a report on the number and percentage of employees of the business who reside in an LMI area.

SEC. 362. EXAMINATIONS.

Requires that each NMVC company shall be subjected to examinations made at the direction of the Investment Division of SBA. This section allows for examinations to be conducted with the assistance of a private sector entity that has both the necessary qualifications and expertise.

It is the intent of the Committee that the oversight of the NMVC program be modeled after that developed for the SBIC program and administered by SBA's Investment Division. Oversight should include a close working relationship between SBA analysts and NMVC management teams, detailed reporting requirements, frequent on-site examinations to evaluate performance and conformance with the operating plan, and careful analysis of the firm's economic impact.

SEC. 363. INJUNCTIONS AND OTHER ORDERS.

Grants SBA the power of injunction over NMVC companies and the authority to act as a trustee or receiver of a company if appointed by a court.

This section of the legislation closely tracks the existing injunction provision (Section 311) of the Small Business Investment Act of 1958. Again, it is the Committee's intent that oversight of the NMVC program be modeled after that developed for the SBIC program and administered by SBA's Investment Division. This oversight should include a close working relationship between SBA an-

alysts and NMVC management teams, detailed reporting requirements, frequent on-site examinations to evaluate performance and conformance with the operating plan, and careful analysis of the firm's economic impact.

SEC. 364. ADDITIONAL PENALTIES FOR NONCOMPLIANCE.

Grants SBA or the Attorney General the authority to file a cause of action against an NMVC company for non-compliance. Should a court find that a company violated or failed to comply with provisions of this legislation or other provisions of the Small Business Investment Act of 1958, this section grants SBA the authority to void the participation agreement between the company and the SBA.

SEC. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF FIDUCIARY DUTY.

Defines what is to be considered as a violation of this legislation, who is considered to have a fiduciary duty, and who is ineligible to serve as an officer, director, or employee of any NMVC company because of unlawful acts.

This section of the legislation closely tracks the unlawful acts provision (Section 314) of the Small Business Investment Act of 1958. It is the Committee's intent to grant SBA the same authority over NMVC companies that it has over Small Business Investment Companies with respect to unlawful acts and the breach of fiduciary responsibility.

SEC. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Grants SBA the authority to use the procedures set forth in Section 313 of the Small Business Investment Act of 1958 to remove or suspend any director or officer of an NMVC company.

SEC. 367. REGULATIONS.

Authorizes the Small Business Administration to issue such regulations as it deems necessary to carry out the provisions of the legislation.

SEC. 368. AUTHORIZATION OF APPROPRIATIONS.

Authorizes appropriations for the Program for Fiscal Years 2000 through 2005. This section authorizes such subsidy budget authority as necessary to guarantee \$150,000,000 of debentures and \$30,000,000 to make operational assistance grants.

The Committee estimates that the Program will only require a one-time appropriation of \$45 million—\$15 million for loan guarantees and \$30 million for operational assistance grants. This \$15 million will allow SBA to back \$150 million in loans to small business in low- or moderate-income areas.

Section 3. Conforming amendment

Makes a conforming change to the Small Business Investment Act of 1958 to account for the changes made by this legislation.

Section 4. Calculation of maximum amount of SBIC leverage

Allows Small Business Investment Companies ("SBICs") to have access to the leverage capital authorized under the program without entering into a participation agreement with SBA to act as an NMVC company. The participation of the SBICs, however, is limited only to investments they make in LMI areas.

This section provides that investments made through the NMVC program will not apply against the leverage cap of the individual SBIC as long as the total amount invested through the program does not exceed 50% of the SBIC's paid-in capital.

Section 5. Bankruptcy exemption for new markets venture capital companies

Adds NMVC companies to the list of entities that may not be considered a debtor under a Title 11 bankruptcy proceeding.

Section 6. Federal savings associations

Amends the "Home Owners Loan Act" to allow federal savings associations to invest in an NMVC company formed under this legislation so long as the investment would not exceed 5 percent of the capital and surplus of the savings association.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives the Committee includes a cost estimate on H.R. 4530 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 2000.

Hon. JAMES M. TALENT,
Chairman, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4530, the New Markets Venture Capital Program Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (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. 4530—New Markets Venture Capital Program Act of 2000

Summary: H.R. 4530 would authorize appropriations for fiscal years 2000 through 2005 for the New Markets Venture Capital (NMVC) program within the Small Business Administration (SBA). This program would provide federal loan guarantees to venture capital corporations that invest in small businesses located in low-income and moderate-income communities. The bill would authorize the appropriation of \$30 million for technical assistance grants and such sums as may be necessary to cover the subsidy costs of such loan guarantees. SBA could make commitments to guarantee loans only to the extent that the total loan principal, any part of which is guaranteed, would not exceed \$150 million or the amount specified in appropriation acts.

CBO estimates that implementing H.R. 4530 would cost a total of \$47 million over the 2001–2005 period, assuming appropriation of the necessary amounts. Because H.R. 4530 would not affect di-

rect spending or receipts, pay-as-you-go procedures would not apply. H.R. 4530 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of the mandate would not be significant. The bill does not contain any new private-sector mandates.

Estimated Cost to the Federal Government: For this estimate, CBO assumes that H.R. 4530 will be enacted in fiscal year 2000 and that funds will be provided for its implementation each year. The estimated budgetary impact of H.R. 4530 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending for NMVC Under Current Law:						
Budget Authority ¹	15	0	0	0	0	0
Estimated Outlays	3	9	2	0	0	0
Proposed Changes:						
Estimated Authorization Level	0	18	17	5	5	5
Estimated Outlays	0	11	16	9	6	5
Spending Under H.R. 4530:						
Estimated Authorization Level	15	18	17	5	5	5
Estimated Outlays	3	20	18	9	6	5

¹ \$15 million is the amount appropriated for fiscal year 2000.

Basis of Estimate: 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 \$150 million in NMVC loan guarantees. For this estimate, CBO assumes SBA would guarantee 100 percent of any loans under this program.

CBO estimates that H.R. 4530 would authorize the appropriation of an additional \$50 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. Specifically, H.R. 4530 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. In addition, CBO estimates that it would cost about \$30 million to subsidize \$150 million in NMVC loan guarantees, which is \$24 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 trends in 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 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. 4530 would authorize SBA to guarantee up to \$150 million of loans, we estimate that this program would require the appropriation of about \$30 million for credit subsidies.

Pay-as-You-Go Considerations: None.

Impact on State, Local, and Tribal Governments: H.R. 4530 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. Such a preemption of state law is an intergovernmental mandate as defined in UMRA, but CBO estimates that this mandate would impose no significant costs on state, local, or tribal governments.

Impact on the Private Sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO Estimate: On June 26, 2000, CBO transmitted a cost estimate for H.R. 2848, the New Markets Initiative Act of 1999, as ordered reported by the House Committee on Banking and Financial Services on April 13, 2000. H.R. 2848 would authorize loan guarantees under the NMVC program of up to \$100 million, and technical assistance to borrowers. CBO estimated those provisions would cost \$40 million over the 2001–2005 period.

Estimate Prepared by: Federal Costs: Mark Hadley. 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.

COMMITTEE ESTIMATE OF COSTS

Pursuant to the Congressional Budget Act of 1974, and clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives the Committee estimates that the amendments to the Small Business Investment Act contained in H.R. 4530, if fully funded, will increase discretionary spending by approximately \$45 million over the next five fiscal years. The Committee also estimates that H.R. 4530 will not affect direct spending. This estimate concurs with Congressional Budget Office (CBO) estimates.

Furthermore, pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H.R. 4530 will increase administrative costs at the Small Business Administration by approximately \$1,000,000 per annum for the next five fiscal years.

UNFUNDED MANDATES

H.R. 4530 contains no unfunded private sector mandates as defined in the Unfunded Mandates Reform Act, Public Law 104–4.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 4530.

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 4530 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

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

FEDERAL ADVISORY COMMITTEE STATEMENT

H.R. 4530 does not create or authorize the establishment of any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

The Committee finds that H.R. 4530 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

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

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

PART A—SMALL BUSINESS INVESTMENT COMPANIES

ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

SEC. 301. (a) A small business investment company shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this title, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

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SEC. 303. (a) * * *

(b) To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) * * *

[(2) After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 301(c) of this Act shall be determined by the amount of such company's private capital—

[(A) if the company has private capital of not more than \$15,000,000, the total amount of leverage shall not exceed 300 per centum of private capital;

[(B) if the company has private capital of more than \$15,000,000 but not more than \$30,000,000, the total amount of leverage shall not exceed \$45,000,000 plus 200 per centum of the amount of private capital over \$15,000,000; and

[(C) if the company has private capital of more than \$30,000,000, the total amount of leverage shall not exceed \$75,000,000 plus 100 per centum of the amount of private capital over \$30,000,000 but not to exceed an additional \$15,000,000.

[(D)(i) The dollar amounts in subparagraphs (A), (B), and (C) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

[(ii) The initial adjustments made under this subparagraph after the date of enactment of the Small Business Reauthorization Act of 1997 shall reflect only increases from March 31, 1993.]

(2) *MAXIMUM LEVERAGE.*—

(A) *IN GENERAL.*—After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 301(c) of this Act shall be determined by the amount of such company's private capital—

(i) if the company has private capital of not more than \$15,000,000, the total amount of leverage shall not exceed 300 percent of private capital;

(ii) if the company has private capital of more than \$15,000,000 but not more than \$30,000,000, the total amount of leverage shall not exceed \$45,000,000 plus 200 percent of the amount of private capital over \$15,000,000; and

(iii) if the company has private capital of more than \$30,000,000, the total amount of leverage shall not exceed \$75,000,000 plus 100 percent of the amount of private capital over \$30,000,000 but not to exceed an additional \$15,000,000.

(B) *ADJUSTMENTS.*—

(i) *IN GENERAL.*—The dollar amounts in clauses (i), (ii), and (iii) of subparagraph (A) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

(ii) *INITIAL ADJUSTMENTS.*—The initial adjustments made under this subparagraph after the date of enactment of the Small Business Reauthorization Act of 1997 shall reflect only increases from March 31, 1993.

(C) *INVESTMENTS IN LOW- OR MODERATE-INCOME AREAS.*—In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low- or moderate-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

* * * * *

(4) *MAXIMUM AGGREGATE AMOUNT OF LEVERAGE.*—

(A) * * *

* * * * *

(D) *INVESTMENTS IN LOW- OR MODERATE-INCOME AREAS.*—In calculating the aggregate outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low- or moderate-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

* * * * *

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 351. DEFINITIONS.

In this part, the following definitions apply:

(1) *DEVELOPMENTAL VENTURE CAPITAL.*—The term “developmental venture capital” means capital in the form of equity investments in businesses made with a primary objective of fostering economic development in low- or moderate-income geographic areas.

(2) *LOW- OR MODERATE-INCOME GEOGRAPHIC AREA.*—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;

(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; or

(B) any area located within—

(i) a historically underutilized business zone (HUBZone), as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p));

(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.

(3) *NEW MARKETS VENTURE CAPITAL COMPANY.*—The term “New Markets Venture Capital company” means a company that—

(A) has been granted final approval by the Administration under section 354(e); and

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

(4) *OPERATIONAL ASSISTANCE.*—The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development.

(5) *PARTICIPATION AGREEMENT.*—The term “participation agreement” means an agreement, between the Administration and a company granted final approval under section 354(e), that—

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

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low- or moderate-income geographic areas.

(6) *SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.*—The term “specialized small business investment company” means any small business investment company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

(C) was licensed under section 301(d), as in effect before September 30, 1996.

SEC. 352. PURPOSES.

The purposes of the New Markets Venture Capital Program established under this part are—

(1) to promote economic development and the creation of wealth and job opportunities in low- or moderate-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low- and moderate-income geographic areas, to be administered by the Administration—

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

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low- or moderate-income geographic areas; and

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

SEC. 353. ESTABLISHMENT.

In accordance with this part, the Administration shall establish a New Markets Venture Capital Program, under which the Administration may—

(1) enter into participation agreements with companies granted final approval under section 354(e) for the purposes set forth in section 352;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 355; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 358.

SEC. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

(a) *ELIGIBILITY.*—A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

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

(2) *the company has a management team with experience in community development financing or relevant venture capital financing; and*

(3) *the company has a primary objective of economic development of low- or moderate-income geographic areas.*

(b) *APPLICATION.—To participate as a New Markets Venture Capital company in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administration that includes—*

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

(2) *information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;*

(3) *a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;*

(4) *a proposal describing how the company will use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company will use licensed professionals, where applicable, on the company's staff or from an outside entity;*

(5) *with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;*

(6) *a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;*

(7) *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*

(8) *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 company will meet the goals of its business plan.*

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

(C) *The need for developmental venture capital investments in the geographic areas in which the company intends to invest.*

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

(G) *The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals whether provided by persons on the company's staff or by persons outside of the company.*

(H) *Any other factors deemed appropriate by the Administration.*

(3) **NATIONWIDE DISTRIBUTION.**—*The Administration shall select companies under paragraph (1) in such a way that promotes investment nationwide.*

(d) **REQUIREMENTS TO BE MET FOR FINAL APPROVAL.**—*The Administration shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:*

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

(2) **NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.**—*In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—*

(A) *must have binding commitments (for contribution 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 not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);*

(B) *must have purchased an annuity—*

(i) *from an insurance company acceptable to the Administration;*

(ii) *using funds (other than the funds raised under paragraph (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 not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or*

(C) *must have binding commitments (for contributions in cash or in kind) of the type described in subparagraph (A) and must have purchased an annuity of the type described in subparagraph (B), which in the aggregate make available, over a multiyear period acceptable to the Administration (not to exceed 10 years), an amount not less than 30*

percent of the total amount of capital and commitments raised under paragraph (1).

(e) **FINAL APPROVAL.**—The Administration shall grant to a company conditionally approved under subsection (c) final approval to participate in the program established under this part after the company has met the requirements set forth in subsection (d).

SEC. 355. DEBENTURES.

(a) **IN GENERAL.**—The Administration may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(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 is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) **MAXIMUM GUARANTEE.**—

(1) **IN GENERAL.**—Under this section, the Administration may guarantee the debentures issued by a New Markets Venture Capital company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administration.

(2) **TREATMENT OF CERTAIN FEDERAL FUNDS.**—For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

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 a New Markets Venture Capital company and guaranteed by the Administration under this part, 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 it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agents for purposes of this section.

(2) **LIMITATION.**—Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that 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 is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administration or its agents under this section.*

(d) *FEES.*—*The Administration shall not collect a fee for any guarantee of a trust certificate 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).*

(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 Administration 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, of 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 part; and

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

(B) *FIDELITY BOND OR INSURANCE REQUIREMENT.*—*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) *APPLICABILITY OF THE SECURITIES EXCHANGE ACT OF 1934.*—*Notwithstanding section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)), trust certificates issued under this section shall not be treated as government securities for the purposes of that Act.*

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. OPERATIONAL ASSISTANCE GRANTS.**(a) IN GENERAL.—**

(1) AUTHORITY.—In accordance with this section, the Administration may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(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.

(3) GRANTS TO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

(A) AUTHORITY.—In accordance with this section, the Administration may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) USE OF FUNDS.—

(i) IN GENERAL.—The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low- or moderate-income geographic area.

(ii) ADDITIONAL LIMITATION.—Operational assistance referred to in clause (i) may not be provided in connection with more than 1 equity investment.

(C) SUBMISSION OF PLANS.—A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) GRANT AMOUNT.—

(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under section 354(d)(2).

(B) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a New Markets Venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Markets Venture Capital companies set forth in section 354(d)(2).

(5) 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 paragraph (4), the Administration shall make pro rata reductions in the

amounts otherwise payable to each company and entity under such paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) *IN GENERAL.*—The Administration may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part, under such terms as the Administration may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

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

(c) *LIMITATION.*—None of the assistance made available under this section may be used for any operating expense of a New Markets Venture Capital company or a specialized small business investment company.

SEC. 359. BANK PARTICIPATION.

(a) *IN GENERAL.*—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, 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. 360. FEDERAL FINANCING BANK.

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

SEC. 361. REPORTING REQUIREMENTS.

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administration such information as the Administration may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low- or moderate-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

SEC. 362. EXAMINATIONS.

(a) *IN GENERAL.*—Each New Markets Venture Capital company that participates in the program established under this part 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 and the expertise necessary to conduct such examinations.

(c) COSTS.—

(1) ASSESSMENT.—

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

(B) *PAYMENT.*—Any company against which the Administration assesses costs under this paragraph shall pay such costs.

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

SEC. 363. INJUNCTIONS AND OTHER ORDERS.

(a) *IN GENERAL.*—Whenever, in the judgment of the Administration, 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, or 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 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) *JURISDICTION.*—In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and 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) *AUTHORITY.*—The Administration may act as trustee or receiver of a New Markets Venture Capital company.

(2) *APPOINTMENT.*—Upon request of 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 by reason of the special circumstances involved.

SEC. 364. ADDITIONAL PENALTIES FOR NONCOMPLIANCE.

(a) *IN GENERAL.*—With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this Act, of any regulation issued under this Act, or of any participation agreement entered into under this Act, the Administration may in accordance with this section—

(1) void the participation agreement between the Administration and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this Act.

(b) ADJUDICATION OF NONCOMPLIANCE.—

(1) *IN GENERAL.*—Before the Administration may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) *PARTIES AUTHORIZED TO FILE CAUSES OF ACTION.*—Each cause of action brought by the United States under this subsection shall be brought by the Administration or by the Attorney General.

SEC. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF FIDUCIARY DUTY.

(a) *PARTIES DEEMED TO COMMIT A VIOLATION.*—Whenever any New Markets Venture Capital company violates any provision of this Act, of a regulation issued under this Act, or of a participation agreement entered into under this Act, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that 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 that 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 of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers 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 any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

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

(B) has been found civilly liable in damages, or has been 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; and

(2) for any person to 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 is 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.

SEC. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 313 (to the extent such procedures are not inconsistent with the requirements of this part), the Administration may remove or suspend any director or officer of any New Markets Venture Capital company.

SEC. 367. REGULATIONS.

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

SEC. 368. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—For fiscal years 2000 through 2005, the Administration is authorized to be appropriated, to remain available until expended—

(1) such subsidy budget authority as may be necessary to guarantee \$150,000,000 of debentures under this part; and

(2) \$30,000,000 to make grants under this part.

(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 362(c)(2) are authorized to be appropriated only for the costs of examinations under section 362 and for the costs of other oversight activities with respect to the program established under this part.

* * * * *

SECTION 20 OF THE SMALL BUSINESS ACT

SEC. 20. (a) * * *

* * * * *

(e) FISCAL YEAR 2000.—

(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2000:

(A) * * *

* * * * *

(C) For the programs authorized by *part A* of title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i) \$1,500,000,000 in purchases of participating securities; and

(ii) \$800,000,000 in guarantees of debentures.

* * * * *

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 351 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, 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

* * * * *

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) * * *

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(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 351 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.

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