

Union Calendar No. 464

106TH CONGRESS
2^D SESSION

H. R. 2848

[Report No. 106–706, Part I]

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.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1999

Mr. WATTS of Oklahoma (for himself, Mr. TALENT, Mr. LEACH, and Mr. BAKER) (all by request) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Ways and Means, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 28, 2000

Reported from the Committee on Banking and Financial Services with an amendment

[Omit the part struck through and insert the part printed in *italic*]

JUNE 28, 2000

Referral to the Committees on Ways and Means and Small Business extended for a period ending not later than July 28, 2000

JULY 28, 2000

The Committees on Ways and Means and Small Business discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “New Markets Initiative
 5 Act of 1999”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.
 Sec. 2. Table of contents.

TITLE I—NEW MARKETS VENTURE CAPITAL PROGRAM

Sec. 101. New Markets Venture Capital Program.
 Sec. 102. Conforming amendments.
 Sec. 103. Bankruptcy exemption for New Markets Venture Capital companies.
 Sec. 104. Federal Savings Associations.

TITLE II—SMALL BUSINESS LOANS

Sec. 201. Participation rate.
 Sec. 202. Guarantee fee.
 Sec. 203. Guarantee reduction.

TITLE III—AMERICA’S PRIVATE INVESTMENT COMPANIES

Sec. 301. Congressional findings and purposes.
 Sec. 302. Definitions.
 Sec. 303. Authorization.
 Sec. 304. Selection of APICs.
 Sec. 305. Operations of APICs.
 Sec. 306. Credit enhancement by the Federal Government.
 Sec. 307. APIC requests for guarantee actions.
 Sec. 308. Examination and monitoring of APICs.
 Sec. 309. Incentives and penalties.

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.

TITLE IV—NEW MARKETS CREDIT

Sec. 401. New markets tax credit.

1 **TITLE I—NEW MARKETS**
 2 **VENTURE CAPITAL PROGRAM**

3 **SEC. 101. NEW MARKETS VENTURE CAPITAL PROGRAM.**

4 Title III of the Small Business Investment Act of
 5 1958 is amended—

6 (1) in the heading, by striking “SMALL BUSI-
 7 NESS INVESTMENT COMPANIES” and insert-
 8 ing “INVESTMENT DIVISION PROGRAMS”;

9 (2) by inserting before the heading for section
 10 301 the following:

11 “PART A—SMALL BUSINESS INVESTMENT COMPANIES”;

12 and

13 (3) by adding at the end the following:

14 “PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

15 **“SEC. 350. DEFINITIONS.**

16 “In this part—

1 “(1) the term ‘New Markets Venture Capital
2 company’ means a company that—

3 “(A) has been approved by the Administra-
4 tion under section 353(e) to operate under the
5 New Markets Venture Capital Program; and

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

8 “(2) the term ‘low- or moderate-income geo-
9 graphic area’ means—

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

14 “(i) the poverty rate is not less than
15 20 percent; or

16 “(ii) in the case of a census tract or
17 division located within a metropolitan area,
18 the median family income for such tract or
19 division does not exceed the greater of 80
20 percent of the statewide median family in-
21 come or 80 percent of the metropolitan-
22 area median family income; or

23 “(iii) in the case of a census tract or
24 division not located within a metropolitan
25 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.

1 **“SEC. 351. PURPOSES.**

2 “The purposes of the New Markets Venture Capital
3 Program are—

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

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

10 “(A) to enter into a participation agree-
11 ment with New Markets Venture Capital com-
12 panies;

13 “(B) to guarantee debentures of New Mar-
14 kets Venture Capital companies to enable each
15 such company to make venture capital invest-
16 ments in smaller enterprises in urban and rural
17 areas; and

18 “(C) to make grants to New Markets Ven-
19 ture Capital companies for the purpose of pro-
20 viding marketing, management, and technical
21 assistance to smaller enterprises financed, or
22 expected to be financed, by such company.

23 **“SEC. 352. ESTABLISHMENT OF PROGRAM.**

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

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

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

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

9 **“SEC. 353. SELECTION OF NEW MARKETS VENTURE CAP-**
10 **ITAL COMPANIES.**

11 “(a) ELIGIBILITY.—A company shall be eligible for
12 participation in the New Markets Venture Capital Pro-
13 gram if—

14 “(1) it is a newly formed for-profit entity or a
15 newly formed for-profit subsidiary of an existing en-
16 tity; and

17 “(2) it has a management team with experience
18 in community development financing or venture cap-
19 ital financing.

20 “(b) APPLICATION.—To participate in the New Mar-
21 kets Venture Capital Program, an eligible company shall
22 submit an application to the Administration that
23 includes—

24 “(1) a business plan describing how the com-
25 pany intends to make successful venture capital in-

1 vestments in low- or moderate-income geographic
2 areas;

3 “(2) information regarding the qualifications of
4 the company’s management;

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

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

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

15 “(6) information regarding the management
16 and financial strength of any parent firm, affiliated
17 firm, or any other firm essential to the success of
18 the company’s business plan; and

19 “(7) such other information as the Administra-
20 tion may require.

21 “(c) CONDITIONAL APPROVAL.—

22 “(1) IN GENERAL.—From among companies
23 submitting applications under subsection (b), the
24 Administration shall in accordance with this sub-

1 section conditionally approve companies to partici-
2 pate in the New Markets Venture Capital Program.

3 “(2) SELECTION CRITERIA.—In selecting com-
4 panies under paragraph (1), the Administration
5 shall consider the following:

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

8 “(B) The experience and background of
9 the company’s management team.

10 “(C) The need for equity investments in
11 the areas in which the company intends to in-
12 vest.

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

16 “(E) The likelihood that the company will
17 be able to satisfy the conditions under sub-
18 section (d).

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

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

1 “(3) NATIONWIDE DISTRIBUTION.—In selecting
2 companies under paragraph (1), the Administration
3 shall ensure that companies are chosen in such a
4 way that investments under the New Markets Ven-
5 ture Capital Program will be made nationwide.

6 “(d) CONDITIONS TO BE MET FOR FINAL AP-
7 PROVAL.—The Administration shall give each condi-
8 tionally approved company a period of time, not to exceed
9 24 months, to satisfy the following conditions:

10 “(1) CAPITAL REQUIREMENT.—Each condi-
11 tionally approved company must raise not less than
12 \$5,000,000 of contributed capital or binding capital
13 commitments from 1 or more investors (other than
14 an agency of the Federal Government) who meet cri-
15 teria established by the Administration; and

16 “(2) NON-ADMINISTRATION RESOURCES FOR
17 TECHNICAL ASSISTANCE.—

18 “(A) IN GENERAL.—In order to provide
19 marketing, management, and technical assist-
20 ance, each conditionally approved company
21 must—

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

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

4 “(II) payable or available over a
5 multiyear period acceptable to the Ad-
6 ministration (not to exceed 10 years):
7 and

8 “(III) in an amount equal to 30
9 percent of the capital and commit-
10 ments raised under subsection (d)(1);
11 or

12 “(ii) must have purchased an
13 annuity—

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

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

20 “(III) that yields cash payments
21 over a multiyear period acceptable to
22 the Administration (not to exceed 10
23 years) in an amount equal to 30 per-
24 cent of the capital and commitments
25 raised under subsection (d)(1); or

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

11 “(B) SPECIAL RULE.— On a showing of
12 special circumstances and good cause, the Ad-
13 ministrator may with respect to a particular
14 company waive the requirements of subsection
15 (d)(2) if the Administrator considers the com-
16 pany to have a viable business plan that reason-
17 ably projects the company’s capacity to raise
18 the amount (in cash or in-kind) required under
19 subsection (d)(2)(A).

20 “(e) FINAL APPROVAL.—The Administration shall
21 grant to a conditionally approved company final approval
22 to participate in the New Markets Venture Capital Pro-
23 gram as a New Markets Venture Capital company after
24 the company—

1 “(1) has satisfied the conditions under sub-
2 section (d); and

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

5 **“SEC. 354. DEBENTURES.**

6 “(a) IN GENERAL.—The Administration may, to the
7 extent authorized in advance in appropriations Acts, guar-
8 antee the timely payment of principal and interest as
9 scheduled on debentures issued by New Markets Venture
10 Capital companies.

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

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

21 “(d) MAXIMUM GUARANTEE.—The Administration
22 may provide guarantees under this section for the deben-
23 tures issued by any New Markets Venture Capital com-
24 pany only to the extent that such guarantees do not exceed
25 150 percent of the contributed capital of the company, as

1 determined by the Administration. Contributed capital
2 shall include capital that is deemed to be Federal funds
3 contributed by an investor other than an agency of the
4 Federal Government.

5 **“SEC. 355. TECHNICAL ASSISTANCE GRANTS.**

6 “(a) IN GENERAL.—

7 “(1) AUTHORITY.—In accordance with this sec-
8 tion, the Administration may make grants to each
9 New Markets Venture Capital company to provide
10 marketing, management, and technical assistance for
11 the benefit of smaller enterprises financed, or ex-
12 pected to be financed, by the company.

13 “(2) TERMS.—Grants made under this sub-
14 section shall be made over a multiyear period not to
15 exceed 10 years, under such other terms as the Ad-
16 ministration may require.

17 “(2) GRANT AMOUNT.—

18 “(A) IN GENERAL.—The amount of a
19 grant made under this subsection to each New
20 Markets Venture Capital company shall be
21 equal to the amount resources raised by the
22 company (in cash or in-kind) under section
23 353(d)(2).

24 “(B) SPECIAL RULE.—Notwithstanding
25 subparagraph (A), the Administration may

1 make a grant under this section in an amount
2 other than that set forth in subparagraph (A),
3 if the Administration considers the grant to be
4 in the best interests of the New Markets Ven-
5 ture Capital Program.

6 “(3) PRO RATA REDUCTIONS.—If the amount
7 made available to carry out this section is insuffi-
8 cient for the Administration to provide grants in the
9 amounts provided for in subsection (a)(2), the Ad-
10 ministration shall make pro rata reductions in the
11 amounts otherwise payable to each New Markets
12 Venture Capital company under such subsection.

13 “(b) SUPPLEMENTAL GRANTS.—

14 “(1) IN GENERAL.—The Administration may
15 make supplemental grants to any New Markets Ven-
16 ture Capital company, containing such terms as the
17 Administration may require, to provide additional
18 marketing, management, and technical assistance for
19 the benefit of smaller enterprises financed, or ex-
20 pected to be financed, by the New Markets Venture
21 Capital company.

22 “(2) MATCHING REQUIREMENT.—The Adminis-
23 tration may require, as a condition of any supple-
24 mental grant made under this subsection, that the
25 New Markets Venture Capital company provide from

1 resources (in cash or in-kind) other than those pro-
2 vided by the Administration an amount equal to the
3 amount of the supplemental grant.

4 **“SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFI-**
5 **CATES.**

6 “(a) ISSUANCE.—The Administration may issue trust
7 certificates representing ownership of all or a fractional
8 part of debentures issued by New Markets Venture Cap-
9 ital companies and guaranteed by the Administration
10 under this Act, if such certificates are based on and
11 backed by a trust or pool approved by the Administration
12 and composed solely of guaranteed debentures.

13 “(b) GUARANTEE.—

14 “(1) IN GENERAL.—The Administration may,
15 under such terms and conditions as the Administra-
16 tion deems appropriate, guarantee the timely pay-
17 ment of the principal of and interest on trust certifi-
18 cates issued by the Administration or its agent for
19 purposes of this section.

20 “(2) LIMITATION.—Guarantees under this sub-
21 section shall be limited to the extent of principal and
22 interest on the guaranteed debentures which com-
23 pose the trust or pool.

24 “(3) PREPAYMENT OR DEFAULT.—In the event
25 that a debenture in a trust or pool is prepaid, or in

1 the event of default of such a debenture, the guar-
2 antee of timely payment of principal and interest on
3 the trust certificates shall be reduced in proportion
4 to the amount of principal and interest such prepaid
5 debenture represents in the trust or pool. Interest on
6 prepaid or defaulted debentures shall accrue and be
7 guaranteed by the Administration only through the
8 date of payment of the guarantee. At any time dur-
9 ing its term, a trust certificate may be called for re-
10 demption due to prepayment or default of all debentures.
11

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

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

23 “(e) SUBROGATION AND OWNERSHIP RIGHTS.—

24 “(1) SUBROGATION.—In the event the Adminis-
25 tration pays a claim under a guarantee issued under

1 this section, it shall be subrogated fully to the rights
2 satisfied by such payment.

3 “(2) OWNERSHIP RIGHTS.—No Federal, State,
4 or local law shall preclude or limit the exercise by
5 the Administration of its ownership rights in the de-
6 bentures residing in a trust or pool against which
7 trust certificates are issued under this section.

8 “(f) MANAGEMENT AND ADMINISTRATION.—

9 “(1) REGISTRATION.—

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

13 “(B) FORMS OF REGISTRATION.—Nothing
14 in this subsection shall prohibit the use of a
15 book entry or other electronic form of registra-
16 tion for trust certificates.

17 “(2) CONTRACTING OF FUNCTIONS.—

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

24 “(i) maintenance on behalf of and
25 under the direction of the Administration,

1 such commercial bank accounts or invest-
2 ments in obligations of the United States
3 as may be necessary to facilitate the cre-
4 ation of trusts or pools backed by deben-
5 tures guaranteed under this Act; and

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

9 “(B) PROTECTION OF THE INTERESTS OF
10 THE UNITED STATES.—Any agent performing
11 functions on behalf of the Administration under
12 this paragraph shall provide a fidelity bond or
13 insurance in such amounts as the Administra-
14 tion determines to be necessary to fully protect
15 the interests of the United States.

16 “(3) REGULATION OF BROKERS AND DEAL-
17 ERS.—The Administrator may regulate brokers and
18 dealers in trust certificates sold under this section.

19 **“SEC. 357. FEES.**

20 “Except as provided in section 356(d), the Adminis-
21 tration may charge such fees as it deems appropriate with
22 respect to any guarantee or grant issued under this part.

23 **“SEC. 358. BANK PARTICIPATION.**

24 “(a) IN GENERAL.—To the extent provided for in
25 subsection (b), any national bank, any member bank of

1 the Federal Reserve System, and any bank that is not a
2 member of such system but which is insured to the extent
3 permitted under applicable State law, may invest in any
4 New Markets Venture Capital company, or in any entity
5 established to invest solely in New Markets Venture Cap-
6 ital companies.

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

11 **“SEC. 359. FEDERAL FINANCING BANK.**

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

15 **“SEC. 360. REPORTING REQUIREMENTS.**

16 “Each New Markets Venture Capital company shall
17 provide to the Administration such information as the Ad-
18 ministration may require, including information on the
19 measurement criteria that the New Markets Venture Cap-
20 ital company proposed in its program application.

21 **“SEC. 361. EXAMINATIONS.**

22 “(a) IN GENERAL.—Each New Markets Venture
23 Capital company shall be subject to examinations made
24 at the direction of the Investment Division of the Adminis-
25 tration in accordance with this section.

1 “(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—

2 Examinations under this section may be conducted with
3 the assistance of a private sector entity that has both the
4 qualifications to conduct and expertise in conducting such
5 examinations.

6 “(c) COSTS.—

7 “(A) IN GENERAL.—The Administrator
8 may assess the cost of examinations under this
9 section, including compensation of the exam-
10 iners, against the company examined.

11 “(B) DEPOSIT OF FUNDS.—Funds col-
12 lected under this section shall be deposited in
13 the account for salaries and expenses of the Ad-
14 ministration.

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—Funds deposited under subparagraph
17 (B) are authorized to be appropriated solely to
18 cover the costs of examinations and other pro-
19 gram oversight activities.

20 **“SEC. 362. INJUNCTIONS AND OTHER ORDERS.**

21 “(a) IN GENERAL.— Whenever, in the Administrator
22 considers that a New Markets Venture Capital company,
23 or any other person, has engaged or is about to engage
24 in any acts or practices which constitute, or will constitute,
25 a violation of any provision of this Act, of any rule or regu-

1 lation under this Act, or of any order issued under this
2 Act, the Administration may make application to the prop-
3 er district court of the United States or to a United States
4 court of any place subject to the jurisdiction of the United
5 States for an order enjoining such acts or practices, or
6 for an order enforcing compliance with such provision,
7 rule, regulation, or order, and such courts shall have juris-
8 diction of such actions and, upon a showing by the Admin-
9 istration that such New Markets Venture Capital company
10 or other person has engaged or is about to engage in any
11 such acts or practices, a permanent or temporary injunc-
12 tion, restraining order, or other order, shall be granted
13 without bond.

14 “(b) SEIZING OF ASSETS.—In any such proceeding
15 the court, as a court of equity may, to the extent it deems
16 necessary, take exclusive jurisdiction of the New Markets
17 Venture Capital company and the assets thereof, wherever
18 located. The court shall have jurisdiction in any such pro-
19 ceeding to appoint a trustee or receiver to hold or admin-
20 ister under the direction of the court the assets so pos-
21 sessed.

22 “(c) ADMINISTRATION AS TRUSTEE OR RECEIVER.—
23 “(1) IN GENERAL.—The Administration may
24 act as trustee or receiver under subsection (b) of a
25 New Markets Venture Capital company.

1 “(2) APPOINTMENT.—At the request by the Ad-
 2 ministration, the court may appoint the Administra-
 3 tion to act as a trustee or receiver of a New Markets
 4 Venture Capital company unless the court deems
 5 such appointment inequitable or otherwise inappro-
 6 priate.

7 **“SEC. 363. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS,**
 8 **DIRECTORS, EMPLOYEES, OR AGENTS;**
 9 **BREACH OF FIDUCIARY DUTY.**

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

22 “(b) FIDUCIARY DUTIES.—It shall be unlawful for
 23 any officer, director, employee, agent, or other participant
 24 in the management or conduct or the affairs of an New
 25 Markets Venture Capital company to engage in any act

1 or practice, or to omit any act, in breach of his fiduciary
2 duty as such officer, director, employee, agent, or partici-
3 pant if, as a result thereof, the New Markets Venture Cap-
4 ital company has suffered or is in imminent danger or suf-
5 fering financial loss or other damage.

6 “(c) UNLAWFUL ACTS.—Except with the written con-
7 sent of the Administration, it shall be unlawful—

8 “(1) for any person to take office as an officer,
9 director, or employee of an New Markets Venture
10 Capital company, or to become an agent or partici-
11 pant in the conduct of the affairs or management of
12 an New Markets Venture Capital company, if the
13 person—

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

17 “(B) the person has been found civilly lia-
18 ble in damages, or has been permanently or
19 temporarily enjoined by order, judgment, or de-
20 cree of a court of competent jurisdiction, by
21 reason of any act or practice involving fraud, or
22 breach of trust; and

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

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

4 “(B) the person found civilly liable in dam-
5 ages, or is permanently or temporarily enjoined
6 by an order, judgment, or decree of a court of
7 competent jurisdiction, by reason of any act or
8 practice involving fraud or breach of trust.

9 “(d) REMOVAL OR SUSPENSION.—

10 “(1) IN GENERAL.—As provided in section 313,
11 the Administration may remove or suspend any per-
12 son upon whom the Administration has served a no-
13 tice under this subsection.

14 “(2) NOTICE.—The Administration may serve
15 upon any person who is an officer, director, or em-
16 ployee of a New Markets Venture Capital company,
17 or an agent or participant in the conduct of the af-
18 fairs or management of the company, a written no-
19 tice of the Administration’s intention to remove or
20 suspend such person from the person’s office or po-
21 sition, if in the opinion of the Administration, such
22 person—

23 “(A) has willfully and knowingly com-
24 mitted any substantial violation of—

25 “(i) this Act,

1 “(ii) any regulation issued under this
2 Act, or

3 “(iii) a cease-and-desist order which
4 has become final, or

5 “(B) has willfully and knowingly com-
6 mitted or engaged in any act, omission, or prac-
7 tice which constitutes a substantial breach of
8 his fiduciary duty, and that such violation or
9 such breach of fiduciary duty is one involving
10 personal dishonesty on the part of such person.

11 **“SEC. 364. REGULATIONS.**

12 “The Administration is authorized to issue such regu-
13 lations as it deems necessary to carry out the provisions
14 of this part in accordance with its purposes.

15 **“SEC. 365. AUTHORIZATION OF APPROPRIATIONS.**

16 “For fiscal years 2000 through 2005, the Adminis-
17 tration is authorized to be appointed such subsidy budget
18 authority as may be necessary to guarantee up to
19 \$100,000,000 of debentures, and up to \$30,000,000 to
20 make technical assistance grants, for the purposes of this
21 part, to remain available until expended. This authority
22 shall be in effect for the period commencing with fiscal
23 year 2000 through fiscal year 2005.”.

1 **SEC. 102. CONFORMING AMENDMENTS.**

2 The table of contents in section 101 of the Small
3 Business Investment Act of 1958 (15 U.S.C. 661 note)
4 is amended—

5 (1) by striking “TITLE III—SMALL BUSI-
6 NESS INVESTMENT COMPANIES” and insert-
7 ing the following:

8 “TITLE III—INVESTMENT DIVISION PROGRAMS
9 “PART A—SMALL BUSINESS INVESTMENT COMPANIES”;

10 and

11 (2) by inserting after the item relating to sec-
12 tion 322 the following:

“PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

“Sec. 350. Definitions.

“Sec. 351. Purposes.

“Sec. 352. Program establishment.

“Sec. 353. Selection of new markets venture capital companies.

“Sec. 354. Debentures.

“Sec. 355. Technical assistance.

“Sec. 356. Issuance and guarantee of trust certificates.

“Sec. 357. Fees.

“Sec. 358. Bank participation.

“Sec. 359. Federal financing bank.

“Sec. 360. Reporting requirements.

“Sec. 361. Examinations.

“Sec. 362. Injunctions and other orders.

“Sec. 363. Unlawful acts and omissions by officers, directors, employees, or
agents; breach of fiduciary duty.

“Sec. 364. Regulations.

“Sec. 365. Authorization of appropriations.”.

13 **SEC. 103. BANKRUPTCY EXEMPTION FOR NEW MARKETS**
14 **VENTURE CAPITAL COMPANIES.**

15 Section 109(b)(2) of title 11, United States Code, is
16 amended by inserting “a New Markets Venture Capital

1 company as defined in section 350 of the Small Business
 2 Investment Act of 1958,” after “homestead association,”.

3 **SEC. 104. FEDERAL SAVINGS ASSOCIATIONS.**

4 Section 5(c)(4) of the Home Owners’ Loan Act (12
 5 U.S.C. 1464(c)(4)) is amended by adding at the end the
 6 following:

7 “(F) NEW MARKETS VENTURE CAPITAL
 8 COMPANIES.—A Federal savings association
 9 may invest in stock, obligations, or other securi-
 10 ties of any New Markets Venture Capital com-
 11 pany as defined in section 350 of the Small
 12 Business investment Act of 1958, except that a
 13 Federal savings association may not make any
 14 investment under this subparagraph if its ag-
 15 gregate outstanding investment under this sub-
 16 paragraph would exceed 5 percent of the capital
 17 and surplus of such savings association.”.

18 **TITLE II—SMALL BUSINESS**
 19 **LOANS**

20 **SEC. 201. PARTICIPATION RATE.**

21 Section 7(a)(2)(A) of the Small Business Act (15
 22 U.S.C. 636(a)(2)(A)) is amended by striking “\$100,000”
 23 each place it appears and inserting “\$150,000”.

1 **SEC. 202. GUARANTEE FEE.**

2 Section 7(a)(18)(B) of the Small Business Act (15
3 U.S.C. 636(a)(18)(B)) is amended by striking “\$80,000”
4 and inserting “\$120,000”.

5 **SEC. 203. GUARANTEE REDUCTION.**

6 Section 7(a)(23)(A) of the Small Business Act (15
7 U.S.C. 636(a)(23)(A)) is amended by striking the period
8 at the end and adding the following: “, except that with
9 respect to each loan of less than \$150,000 guaranteed
10 under this subsection, the Administration shall assess and
11 collect an annual fee in an amount equal to 0.3 percent
12 of the outstanding balance of the deferred participation
13 share of the loan.”

14 **TITLE III—AMERICA’S PRIVATE**
15 **INVESTMENT COMPANIES**

16 **SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSES.**

17 ~~(a) CONGRESSIONAL FINDINGS.—~~

18 ~~(1) People living in distressed areas, both urban~~
19 ~~and rural, characterized by high levels of joblessness,~~
20 ~~poverty, and low incomes continue to miss out on~~
21 ~~the economic expansion experienced by the Nation as~~
22 ~~a whole.~~

23 ~~(2) Unequal access to economic opportunities~~
24 ~~continues to make the social costs of joblessness and~~
25 ~~poverty to our Nation very high.~~

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

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

6 ~~(1)~~ license private for profit community devel-
 7 opment entities that will focus on making equity and
 8 credit investments for large-scale business develop-
 9 ments that benefit low-income communities;

10 ~~(2)~~ provide credit enhancement for those enti-
 11 ties for use in low-income communities; and

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

17 **SEC. 302. DEFINITIONS.**

18 As used in this Act:

19 ~~(1)~~ The term “Agency” has the meaning given
 20 such term in section 551(1) of title 5, United States
 21 Code.

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

1 ~~(3)~~ The term “Administrator” means the Ad-
2 ministrator of the Small Business Administration.

3 ~~(4)~~ The term “community development entity”
4 means an entity whose primary mission must be
5 serving or providing investment capital for low-in-
6 come communities or low-income persons, which
7 maintains accountability to residents of low-income
8 communities, and which has 60 percent of its aggre-
9 gate gross assets invested in low-income community
10 investments or residential property located in low-in-
11 come communities.

12 ~~(5)~~ The term “cost” has the meaning set forth
13 in section 502(5) of the Federal Credit Reform Act
14 of 1990.

15 ~~(6)~~ The term “debentures” means debt instru-
16 ments the terms of any of which may be specified
17 by the Secretary.

18 ~~(7)~~ The term “HUD” means the Secretary of
19 Housing and Urban Development or the Department
20 of Housing and Urban Development, as the context
21 requires.

22 ~~(8)~~ The term “low-income communities” means
23 census tracts with (A) poverty rates of at least 20
24 percent, based on the most recent census data; or
25 (B) median family income that does not exceed 80

1 percent of the greater of (i) metropolitan area me-
2 dian family income, or (ii) statewide median family
3 income.

4 (9) The term “qualified low-income community
5 investments” means equity investments in, or loans
6 to, qualified active businesses located in low-income
7 communities.

8 (10) The term “qualified active business”
9 means a business or trade—

10 (A) at least 50 percent of the gross income
11 of which is derived from conduct of trade or
12 business activities in low-income communities;

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

16 (C) a substantial portion of the services
17 that the employees of which perform are per-
18 formed in low-income communities; and

19 (D) less than 5 percent of the aggregate
20 unadjusted bases of the property of which is at-
21 tributable to certain financial property, as the
22 Secretary shall set forth in regulations, or in
23 collectibles, other than collectibles held pri-
24 marily for sale to customers.

1 (11) The term “Secretary” means the Secretary
2 of Housing and Urban Development, unless other-
3 wise specified in this Act.

4 **SEC. 303. AUTHORIZATION.**

5 (a) **LICENSES.**—The Secretary is authorized to li-
6 cense America’s Private Investment Companies, in accord-
7 ance with the terms of this Act.

8 (b) **REGULATIONS.**—The Secretary is authorized to
9 regulate APICs for compliance with sound financial man-
10 agement practices, and the program and procedural goals
11 of this and other related Acts, and other purposes as re-
12 quired or authorized by this Act, or determined by the
13 Secretary. The Secretary may issue regulations, Federal
14 Register notices, and other guidance or directives to carry
15 out licensing and regulatory and other duties under this
16 Act.

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

18 (1) **NUMBER OF LICENSES.**—The Secretary is
19 authorized to have outstanding at any one time the
20 number of licenses for APICs that may be supported
21 by the amount of the budget authority appropriated
22 in accordance with the Federal Credit Reform Act of
23 1990 for the subsidy cost and the investment strate-
24 gies of such APICs.

1 ~~(2) USE OF CREDIT SUBSIDY AFTER INITIAL~~
 2 ~~APPROPRIATION TO HUD.~~—With respect to any ap-
 3 propriation of budget authority for the credit costs
 4 after the initial appropriation, the Secretary may li-
 5 cense additional APICs, or as hereinafter provided,
 6 increase the credit subsidy allocated to an APIC as
 7 an award for high performance under this Act.

8 ~~(d) COOPERATION AND COORDINATION.~~—

9 ~~(1) PROGRAM POLICIES.~~—The Secretary is au-
 10 thorized to coordinate and cooperate, through memo-
 11 randa of understanding, an APIC liaison committee,
 12 or otherwise, with the Administrator, the Secretary
 13 of the Treasury, and other agencies in the discretion
 14 of the Secretary, on implementation of this Act, in-
 15 cluding regulation, examination, and monitoring of
 16 APICs under this Act.

17 ~~(2) OPERATIONS.~~—The Secretary may carry
 18 out this Act—

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

22 ~~(B) indirectly, under contracts or agree-~~
 23 ments, as the Secretary shall determine.

24 ~~(e) FEES AND CHARGES FOR ADMINISTRATIVE~~
 25 ~~COSTS.~~—To the extent provided in appropriations Acts,

1 the Secretary is authorized to impose fees and charges for
 2 application, review, licensing, and regulation, or other ac-
 3 tions under this Act, and to pay for the costs of such ac-
 4 tivities from the fees and charges collected.

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

8 (g) FUNDING.—

9 (1) AUTHORIZATION FOR APPROPRIATION OF
 10 COST OF ANNUAL LOAN GUARANTEE COMMIT-
 11 MENT.—For each of fiscal years 2000, 2001, 2002,
 12 and 2003, there is authorized to be appropriated up
 13 to \$26,000,000 for the cost of annual loan guar-
 14 antee commitments under this Act. The Secretary
 15 may make commitments to guarantee loans only to
 16 the extent that the total loan principal, any part of
 17 which is guaranteed, will not exceed \$1,000,000,000,
 18 or the amount specified in appropriations Acts in
 19 each such fiscal year. Amounts appropriated under
 20 this paragraph shall remain available for 5 years.

21 (2) AUTHORIZATION FOR APPROPRIATION OF
 22 ADMINISTRATIVE EXPENSES.—For each of the fiscal
 23 years 2000, 2001, 2002, and 2003, there is author-
 24 ized to be appropriated \$1,000,000 for administra-
 25 tive expenses for carrying out this Act. The Sec-

1 retary may transfer amounts appropriated under
 2 this paragraph to any appropriation account of
 3 HUD or another agency, to carry out the program
 4 under this Act. Any agency to which the Secretary
 5 may transfer amounts under this Act is authorized
 6 to accept such transferred amounts in any appro-
 7 priation account of such agency.

8 **SEC. 304. SELECTION OF APICS.**

9 (a) NOTICE OF COMPETITIONS.—The Secretary shall
 10 select APICs for licensing on the basis of competitions.
 11 Such competitions shall be announced by a Federal Reg-
 12 ister notice that invites applications for APIC licenses.
 13 Each such notice shall set forth application requirements,
 14 and such other terms of the competition not otherwise pro-
 15 vided for, as determined by the Secretary.

16 (b) LICENSEE SELECTION CRITERIA.—The Secretary
 17 shall select among applicants for licenses on the basis of
 18 the extent to which an applicant may be expected to
 19 achieve the goals of the Act by satisfying the requirements
 20 set forth in this subsection.

21 (1) The applicant shall be a private for profit
 22 entity that qualifies as a community development en-
 23 tity for the purposes of the New Markets Tax Cred-
 24 its, to the extent such credits are established under
 25 Federal law.

1 (2) The entity must, as of the time that the li-
2 cense is approved, have reasonably available to it, as
3 determined by the Secretary, a minimum of
4 \$25,000,000 in equity capital, as determined by the
5 Secretary.

6 (3) The entity must demonstrate that its man-
7 agers are qualified, and have the knowledge, experi-
8 ence, and capability necessary to raise large amounts
9 of capital and make investments for community eco-
10 nomic development in distressed areas.

11 (4) The entity must demonstrate that, as a
12 matter of sound financial management practices, it
13 is structured to preclude financial conflict of interest
14 between the APIC and a manager or investor.

15 (5) The entity must prepare and submit an in-
16 vestment strategy that includes benchmarks for eval-
17 uation of its progress.

18 (6) The entity must prepare and submit a
19 statement of public purpose goals. The statement
20 shall include elements specified by the Secretary, in-
21 cluding proposed measurements and strategies for
22 meeting the goals. The goals shall promote commu-
23 nity and economic development, and include at
24 least—

1 (A) making investments that are qualified
2 investments in low-income communities;

3 (B) creation of jobs that pay decent wages
4 in low-income communities and for residents of
5 such areas; and

6 (C) involvement of community-based orga-
7 nizations and residents in community develop-
8 ment activities.

9 (7) The entity must demonstrate a capacity to
10 cooperate with States or units of general local gov-
11 ernment and with community-based organizations
12 and residents of low-income communities.

13 (8) The entity must agree to comply with appli-
14 cable laws, including Federal executive orders, Office
15 of Management and Budget circulars, and Treasury
16 requirements, and such operating and regulatory re-
17 quirements as the Secretary may impose from time
18 to time.

19 (9) The entity must satisfy other application re-
20 quirements that the Secretary may impose by regu-
21 lation or Federal Register notice.

22 (c) COMMUNICATIONS BETWEEN HUD AND APPLI-
23 CANTS DURING SELECTION PROCESS.—

24 (1) The Secretary shall set forth in regulations
25 the procedures under which HUD, on the one hand,

1 and applicants for APIC licenses, and others, on the
2 other hand, may communicate. Such regulations
3 shall—

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

7 (B) permit such officers and employees to
8 request and discuss with the applicant and oth-
9 ers (such as banks or other credit or business
10 references, or potential investors, that the appli-
11 cant specifies in writing) any more detailed in-
12 formation that may be desirable to facilitate
13 HUD's review of the applicant's application;

14 (C) restrict such officers and employees
15 from revealing to any applicant—

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

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

22 (D) set forth requirements for making and
23 keeping records of any communications con-
24 ducted under this subsection, including require-
25 ments 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) Regulations under this subsection may be issued as interim rules for effect on or before the date of publication of the first notice under subsection (a), and shall apply only with respect to applications under such notice. Regulations to implement this subsection with respect to any notice after the first such notice shall be subject to notice and comment rulemaking.

(3) 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. 305. OPERATIONS OF APICS.

(a) IN GENERAL.—

(1) An APIC shall have any powers or authorities—

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

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

3 (C) as the Secretary may prescribe by reg-
4 ulation.

5 (2) Nothing in this Act shall preclude an APIC
6 or its investors from receiving an allocation of New
7 Market Tax Credits (to the extent such credits are
8 established under Federal law) if the APIC satisfies
9 any applicable terms and conditions under the Inter-
10 nal Revenue Code of 1986.

11 (b) INVESTMENT LIMITATIONS.—

12 (1) QUALIFIED LOW-INCOME COMMUNITY IN-
13 VESTMENTS.—Substantially all investments that an
14 APIC makes must be qualified low-income commu-
15 nity investments if the investments are financed
16 with—

17 (A) amounts available from the proceeds of
18 the issuance of an APIC's debenture guaranteed
19 under this Act;

20 (B) proceeds of the sale of obligations de-
21 scribed under subsection (c)(3)(C)(iii); or

22 (C) the use of equity capital, as deter-
23 mined by the Secretary, in an amount specified
24 in the APIC's license.

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

5 (A) the APICs equity capital; plus
 6 (B) an amount equal to the percentage
 7 limit that the Secretary determines that APIC
 8 may have outstanding at any one time, under
 9 subsection (c)(2)(A).

10 (c) BORROWING POWERS; DEBENTURES.—

11 (1) ISSUING.—An APIC may issue debentures
 12 that the Secretary may guarantee under the terms
 13 of this Act.

14 (2) LEVERAGE LIMITS.—In general, as a mat-
 15 ter of sound financial management practices—

16 (A) the total amount of debentures that an
 17 APIC issues under this Act that an APIC may
 18 have outstanding at any one time shall not ex-
 19 ceed an amount equal to 200 percent of the eq-
 20 uity capital of the APIC, as determined by the
 21 Secretary: *Provided*, That the Secretary may by
 22 regulation increase the foregoing percentage to
 23 up to 300 percent for all APICs, or any reason-
 24 able class of APICs; and

1 (B) an APIC must not have more than
2 \$300,000,000 in face value of debentures issued
3 under this Act outstanding at any one time.

4 ~~(3) REPAYMENT.—~~

5 (A) An APIC must have repaid, or have
6 otherwise been relieved of indebtedness, with re-
7 spect to any interest or principal amounts of
8 borrowings under this subsection no less than 2
9 years before the APIC may dissolve or other-
10 wise complete the wind-up of its business.

11 (B) An APIC may repay any interest or
12 principal amounts of borrowings under this sub-
13 section at any time: *Provided*, That the repay-
14 ment of such amounts shall not relieve an APIC
15 of any duty otherwise applicable to the APIC
16 under this Act, unless the Secretary orders such
17 relief.

18 (C) Until an APIC has repaid all interest
19 and principal amounts on APIC borrowings
20 under this subsection, an APIC may use the
21 proceeds of investments in accordance with reg-
22 ulations issued by the Secretary only to—

23 (i) pay for proper costs and expenses
24 the APIC incurs in connection with such
25 investments;

- 1 (ii) pay for the reasonable administra-
- 2 tive expenses of the APIC;
- 3 (iii) purchase Treasury securities;
- 4 (iv) repay interest and principal
- 5 amounts on APIC borrowings under this
- 6 subsection;
- 7 (v) make interest, dividend, or other
- 8 distributions to or on behalf of an investor;
- 9 or
- 10 (vi) undertake such other purposes as
- 11 the Secretary may approve.

12 ~~(D)~~ After an APIC has repaid all interest
 13 and principal amounts on APIC borrowings
 14 under this subsection, and subject to continuing
 15 compliance with subsection (a), the APIC may
 16 use the proceeds from investments to make in-
 17 terest, dividend, or other distributions to or on
 18 behalf of investors in the nature of returns on
 19 capital, or the withdrawal of equity capital,
 20 without regard to subparagraph (C) but in con-
 21 formity with the APICs investment strategy
 22 and statement of public purpose goals.

23 (d) REUSE OF DEBENTURE PROCEEDS.—An APIC
 24 may use the proceeds of sale of Treasury securities pur-
 25 chased under subsection (c)(3)(C)(iii) to make qualified

1 low-income community investments, subject to the Sec-
2 retary's approval. In making the request for the Sec-
3 retary's approval, the APIC shall follow the procedures ap-
4 plicable to an APIC's request for HUD guarantee action,
5 as the Secretary may modify such procedures for imple-
6 mentation of this subsection. Such procedures shall never-
7 theless include the description and certifications that an
8 APIC must include in all requests for guarantee action,
9 and the environmental certification applicable to initial ex-
10 penditures for a project or activity.

11 (e) ANTIPIRATING.—Notwithstanding any other pro-
12 vision of law, an APIC may not use any equity capital
13 required to be contributed under this Act, or the proceeds
14 from the sale of any debenture under this Act, to make
15 an investment, as determined by the Secretary, to assist
16 directly in the relocation of any industrial or commercial
17 plant, facility, or operation, from 1 area to another area,
18 if the relocation is likely to result in a significant loss of
19 employment in the labor market area from which the relo-
20 cation occurs.

21 (f) EXCLUSION OF APIC FROM DEFINITION OF
22 DEBTOR UNDER BANKRUPTCY PROVISIONS.—Section
23 109(b)(2) of title 11 of the United States Code is amended
24 by inserting before “credit union” the following: “Amer-
25 ica's Private Investment Companies licensed by the De-

1 partment of Housing and Urban Development under the
2 America's Private Investment Companies Act,".

3 **SEC. 306. CREDIT ENHANCEMENT BY THE FEDERAL GOV-**
4 **ERNMENT.**

5 (a) ISSUANCE AND GUARANTEE OF DEBENTURES.—
6 Consistent with the Federal Credit Reform Act of 1990,
7 the Secretary is authorized to make commitments to guar-
8 antee and guarantee the timely payment of all principal
9 and interest as scheduled on, debentures issued by APICs.
10 Such commitments or guarantees may be made by the
11 Secretary on such terms and conditions, including but not
12 limited to amounts, expirations, number, priorities of re-
13 payment, security, collateral, amortization, payment of in-
14 terest (including the timing thereof), and fees and charges,
15 as the Secretary determines to be appropriate, in docu-
16 ments that the Secretary approves for any commitment
17 or guarantee, or pursuant to regulations issued by the Sec-
18 retary. Debentures guaranteed by the Secretary under this
19 subsection shall be senior to any debt obligation, equity
20 contribution or earnings, or the distribution of dividends,
21 interest, or other amounts of an APIC, notwithstanding
22 any Federal or other law. Debentures may be issued for
23 a term of not to exceed 21 years and shall bear interest
24 during all or any part of that time period at a rate or

1 rates approved by the Secretary. The debentures shall also
 2 contain such other terms as the Secretary may fix.

3 ~~(b) ISSUANCE OF TRUST CERTIFICATES.—~~The Sec-
 4 retary, or an agent or entity selected by the Secretary,
 5 is authorized to issue trust certificates representing own-
 6 ership of all or a fractional part of guaranteed debentures
 7 issued by APICs and held in trust.

8 ~~(c) GUARANTEE OF TRUST CERTIFICATES.—~~

9 ~~(1) IN GENERAL.—~~The Secretary is authorized,
 10 upon such terms and conditions as the Secretary de-
 11 termines to be appropriate, to guarantee the timely
 12 payment of the principal of and interest on trust
 13 certificates issued by the Secretary, or an agent or
 14 other entity, for purposes of this section. Such guar-
 15 antee shall be limited to the extent of principal and
 16 interest on the guaranteed debentures which com-
 17 pose the trust.

18 ~~(2) SUBSTITUTION OPTION.—~~The Secretary
 19 shall have the option to replace in the corpus of the
 20 trust any prepaid or defaulted debenture with a de-
 21 benture, another full faith and credit instrument, or
 22 any obligations of the United States, that may rea-
 23 sonably substitute for such prepaid or defaulted de-
 24 benture.

1 (3) PROPORTIONATE REDUCTION OPTION.—In
 2 the event that the Secretary elects not to exercise
 3 the option under paragraph (2), and a debenture in
 4 such trust is prepaid, or in the event of default of
 5 a debenture, the guarantee of timely payment of
 6 principal and interest on the trust certificate shall be
 7 reduced in proportion to the amount of principal and
 8 interest that such prepaid debenture represents in
 9 the trust. Interest on prepaid or defaulted 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
 10 be called for redemption due to prepayment or default of all debentures that are in the corpus of the
 11 trust.

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

15 (e) SUBROGATION AND LIENS.—

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

1 (2) No State or local law, and no Federal law,
2 shall preclude or limit the exercise by the Secretary
3 of its ownership rights in the debentures in the cor-
4 pus of a trust under this section.

5 (f) REGISTRATION.—

6 (1) The Secretary shall provide for a central
7 registration of all trust certificates issued pursuant
8 to this section.

9 (2) The Secretary may contract with an agent
10 or agents to carry out on behalf of the Secretary the
11 pooling and the central registration functions of this
12 section notwithstanding any other provision of law,
13 including maintenance on behalf of and under the
14 direction of the Secretary, such commercial bank ac-
15 counts or investments in obligations of the United
16 States as may be necessary to facilitate trusts
17 backed by debentures guaranteed under this Act and
18 the issuance of trust certificates to facilitate forma-
19 tion of the corpus of the trusts. The Secretary may
20 require such agent or agents to provide a fidelity
21 bond or insurance in such amounts as the Secretary
22 determines to be necessary to protect the interests of
23 the Government.

1 ~~(3) Book-entry or other electronic forms of reg-~~
 2 ~~istration for trust certificates under this Act are au-~~
 3 ~~thorized.~~

4 ~~(g) TIMING OF ISSUANCE OF GUARANTEES OF DE-~~
 5 ~~BENTURES AND TRUST CERTIFICATES.—The Secretary~~
 6 ~~may, from time to time in the Secretary's discretion, exer-~~
 7 ~~cise the authority to issue guarantees of debentures under~~
 8 ~~this Act or trust certificates under this Act.~~

9 **SEC. 307. APIC REQUESTS FOR GUARANTEE ACTIONS.**

10 ~~(a) ALL APIC REQUESTS FOR HUD GUARANTEE~~
 11 ~~ACTION.—An APIC may request that the Secretary guar-~~
 12 ~~antee a debenture that the APIC intends to issue, in ac-~~
 13 ~~cordance with the Secretary's regulations. All such re-~~
 14 ~~quests shall include a description of the manner in which~~
 15 ~~the APIC intends to use the proceeds from such deben-~~
 16 ~~ture. All such requests shall also include certification by~~
 17 ~~the APIC that the APIC is in substantial compliance~~
 18 ~~with—~~

19 ~~(1) this Act and other applicable laws;~~
 20 ~~(2) all terms and conditions of its license, and~~
 21 ~~of any penalty or condition that may have arisen~~
 22 ~~from examination or monitoring by the Secretary or~~
 23 ~~otherwise, including the satisfaction of any financial~~
 24 ~~audit exception that may have been outstanding;~~

1 (3) all requirements relating to the allocation
2 and use of New Markets Tax Credits, to the extent
3 such credits are established under Federal law; and
4 (4) any other requirements that the Secretary
5 may specify under regulations.

6 (b) REQUESTS FOR GUARANTEE OF DEBENTURES
7 THAT WOULD INCLUDE FUNDING FOR INITIAL EXPENDI-
8 TURE FOR A PROJECT OR ACTIVITY.—In addition to the
9 description and certification that an APIC is required to
10 supply in all requests for guarantee action under sub-
11 section (a), in the case of an APIC's request for a guar-
12 antee that includes a debenture, the proceeds of which the
13 APIC expects to be used as its initial expenditure for a
14 project or activity in which the APIC intends to invest,
15 and the expenditure for which would require an environ-
16 mental assessment under the National Environmental Pol-
17 icy Act of 1969 and other related laws that further the
18 purposes of such Act, such request for guarantee action
19 must include evidence satisfactory to the Secretary of the
20 certification of the completion of environmental review of
21 the project or activity required of the cognizant State or
22 local government under subsection (c). If the environ-
23 mental review responsibility for the project or activity has
24 not been assumed by a State or local government under
25 subsection (c), then the Secretary is responsible for ear-

1 rying out the applicable responsibilities under the National
 2 Environmental Policy Act of 1969 and other provisions
 3 of law that further the purposes of such Act that relate
 4 to the project or activity, and the Secretary must execute
 5 such responsibilities before acting on the APIC's request
 6 for the guarantee that is covered by this subsection.

7 (c) ~~RESPONSIBILITY FOR ENVIRONMENTAL RE-~~
 8 ~~VIEWS.—~~

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

15 (2) ~~ASSUMPTION OF RESPONSIBILITY BY COG-~~
 16 ~~NIZANT UNIT OF GENERAL GOVERNMENT.—~~

17 (A) ~~GUARANTEE OF DEBENTURES.—~~In
 18 order to assure that the policies of the National
 19 Environmental Policy Act of 1969 and other
 20 provisions of law that further the purposes of
 21 such Act (as specified in regulations issued by
 22 the Secretary) are most effectively implemented
 23 in connection with the expenditure of funds
 24 under this Act, and to assure to the public
 25 undiminished protection of the environment, the

1 Secretary may, under such regulations, in lieu
2 of the environmental protection procedures oth-
3 erwise applicable, provide for the guarantee of
4 debentures, any part of the proceeds of which
5 are to fund particular qualified low-income com-
6 munity investments of APICs under this Act, if
7 a State or unit of general local government, as
8 designated by the Secretary in accordance with
9 regulations issued by the Secretary, assumes all
10 of the responsibilities for environmental review,
11 decisionmaking, and action pursuant to the Na-
12 tional Environmental Policy Act of 1969 and
13 such other provisions of law that further such
14 Act as the regulations of the Secretary specify,
15 that would otherwise apply to the Secretary
16 were the Secretary to undertake the funding of
17 such investments as a Federal action.

18 (B) IMPLEMENTATION.—The Secretary
19 shall issue regulations to carry out this sub-
20 section only after consultation with the Council
21 on Environmental Quality. Such regulations
22 shall—

23 (i) specify any other provisions of law
24 which further the purposes of the National
25 Environmental Policy Act of 1969 and to

1 which the assumption of responsibility as
 2 provided in this subsection applies;

3 (ii) provide eligibility criteria and pro-
 4 cedures for the designation of a State or
 5 unit of general local government to assume
 6 all of the responsibilities in this subsection;

7 (iii) specify the purposes for which
 8 funds may be committed without regard to
 9 the procedure established under paragraph
 10 (3);

11 (iv) provide for monitoring of the per-
 12 formance of environmental reviews under
 13 this subsection;

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

17 (vi) subject to the discretion of the
 18 Secretary, provide for suspension or termi-
 19 nation by the Secretary of the assumption
 20 under subparagraph (A).

21 ~~(C) RESPONSIBILITIES OF STATES AND~~
 22 ~~UNITS OF GENERAL LOCAL GOVERNMENT.—~~The
 23 Secretary's duty under subparagraph (B) shall
 24 not be construed to limit any responsibility as-
 25 sumed by a State or unit of general local gov-

1 ernment with respect to any particular request
2 for guarantee under subparagraph (A), or the
3 use of funds for a qualified investment.

4 ~~(3)~~ **PROCEDURE.**—The Secretary shall approve
5 the request for guarantee of a debenture, any part
6 of the proceeds of which is to fund particular quali-
7 fied low-income community investments of APICs
8 under this Act, that is subject to the procedures au-
9 thorized by this subsection only if, not less than 15
10 days prior to such approval and prior to any com-
11 mitment of funds to such investment (except for
12 such purposes specified in the regulations issued
13 under paragraph ~~(2)~~(B)), the APIC submits to the
14 Secretary a request for guarantee of a debenture
15 that is accompanied by evidence of a certification of
16 the State or unit of general local government which
17 meets the requirements of paragraph (4). The ap-
18 proval by the Secretary of any such certification
19 shall be deemed to satisfy the Secretary's respon-
20 sibilities pursuant to paragraph (1) under the Na-
21 tional Environmental Policy Act of 1969 and such
22 other provisions of law as the regulations of the Sec-
23 retary specify insofar as those responsibilities relate
24 to the guarantees of debentures, any parts of the

1 proceeds of which are to fund such investments;
2 which are covered by such certification.

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

5 (A) be in a form acceptable to the Sec-
6 retary;

7 (B) be executed by the chief executive offi-
8 cer or other officer of the State or unit of gen-
9 eral local government who qualifies under regu-
10 lations of the Secretary;

11 (C) specify that the State or unit of gen-
12 eral local government under this subsection has
13 fully carried out its responsibilities as described
14 under paragraph (2); and

15 (D) specify that the certifying officer—

16 (i) consents to assume the status of a
17 responsible Federal official under the Na-
18 tional Environmental Policy Act of 1969
19 and each provision of law specified in regu-
20 lations issued by the Secretary insofar as
21 the provisions of such Act or other such
22 provision of law apply pursuant to para-
23 graph (2); and

24 (ii) is authorized and consents on be-
25 half of the State or unit of general local

1 government and himself or herself to ac-
2 cept the jurisdiction of the Federal courts
3 for the purpose of enforcement of the re-
4 sponsibilities as such an official.

5 **SEC. 308. EXAMINATION AND MONITORING OF APICS.**

6 (a) **IN GENERAL.**—The Secretary shall, under regula-
7 tions, through audits, performance agreements, license
8 conditions, or otherwise, examine and monitor the oper-
9 ations and activities of APICs for compliance with sound
10 financial management practices, and for satisfaction of the
11 program and procedural goals of this Act and other re-
12 lated Acts. The Secretary may undertake any responsi-
13 bility under this section in cooperation with an APIC liai-
14 son committee, or any agency that is a member of such
15 a committee, or other agency.

16 (b) **MONITORING, UPDATING, AND PROGRAM RE-**
17 **VIEW.**—

18 (1) **REPORTING AND UPDATING.**—The Sec-
19 retary may establish such annual or more frequent
20 reporting requirements for APICs, and such require-
21 ments for independent audits, and the updating of
22 the statement of public purpose goals, investment
23 strategy (including the benchmarks in such strat-
24 egy), and other documents that may have been used
25 in the license application process under this Act, as

1 the Secretary determines necessary to assist the Sec-
 2 retary in monitoring the compliance and perform-
 3 ance of APICs.

4 (2) EXAMINATIONS.—The Secretary shall, no
 5 less often than once every 2 years, examine the oper-
 6 ations and portfolio of each APIC licensed under
 7 this Act for compliance with sound financial man-
 8 agement practices, and for compliance with this Act.

9 (3) EXAMINATION STANDARDS.—

10 (A) SOUND FINANCIAL MANAGEMENT
 11 PRACTICES.—The Secretary shall examine each
 12 APIC to ensure, as a matter of sound financial
 13 management practices, substantial compliance
 14 with this and other applicable laws, including
 15 Federal executive orders, Department of Treas-
 16 ury and Office of Management and Budget
 17 guidance, circulars, and application and licens-
 18 ing requirements on a continuing basis. The
 19 Secretary may set any additional sound finan-
 20 cial management practices standards by regula-
 21 tion, including standards that address solvency
 22 and financial exposure.

23 (B) PERFORMANCE AND OTHER EXAMINA-
 24 TIONS.—The Secretary shall monitor each
 25 APICs progress in meeting the goals in the

1 APICs statement of public purpose goals, exe-
2 cuting the APICs investment strategy, and
3 other matters.

4 **SEC. 309. INCENTIVES AND PENALTIES.**

5 (a) INCENTIVES.—From amounts of budget authority
6 appropriated after the initial appropriation for the cost of
7 annual loan guarantee commitments under this Act, the
8 Secretary may increase the credit subsidy allocated to an
9 APIC, in the Secretary's discretion, as an award for high
10 performance of the APIC in carrying out its investment
11 strategy and statement of public purpose goals.

12 (b) PENALTIES.—

13 (1) IN GENERAL.—The Secretary may penalize
14 any APIC, or any manager of an APIC, in the event
15 such APIC or a manager of the APIC commits an
16 act of fraud, mismanagement, or noncompliance with
17 this Act or regulations thereunder or a condition of
18 the APICs license under this Act. The Secretary in
19 regulations shall identify, by generic description of a
20 role or responsibilities, any manager of an APIC
21 that is subject to this subsection.

22 (2) PENALTIES REQUIRING NOTICE AND HEAR-
23 ING.—With respect to an act of commission or omis-
24 sion under paragraph (1) for which the Secretary
25 may penalize an APIC or a manager, the Secretary

1 may, following notice in writing to the APIC or the
2 manager, and opportunity for administrative
3 hearing—

4 (A) assess a civil money penalty against an
5 APIC, or a manager of an APIC, the amount
6 of which may exceed \$10,000;

7 (B) require an APIC to divest any interest
8 in an investment, on such terms and conditions
9 as the Secretary imposes; or

10 (C) revoke the APICs license.

11 (3) PENALTIES REQUIRING NOTICE AND AN OP-
12 PORTUNITY TO RESPOND.—With respect to any act
13 of commission or omission under paragraph (1) for
14 which the Secretary may penalize an APIC or a
15 manager, following notice in writing and an oppor-
16 tunity for the APIC or manager to respond, impose
17 any reasonable penalty. Such a penalty may, in addi-
18 tion to any others, be—

19 (A) a civil money penalty of \$10,000 or
20 less;

21 (B) the suspension of an APICs license, or
22 the conditioning of the use of an APICs license,
23 for up to 90 days, including the deferral for the
24 period of the suspension of a commitment to
25 guarantee any new debenture of the APIC; or

1 ~~(C)~~ any other penalty that the Secretary
2 determines to be less burdensome to the APIC
3 than a penalty that requires notice and an ad-
4 ministrative hearing under this Act.

5 ~~(e)~~ PROCEDURES.—

6 ~~(1)~~ No award under this section shall be made
7 until notice thereof is published in the Federal Reg-
8 ister.

9 ~~(2)~~ No civil money penalty, or other penalty
10 under subsection (b), except suspension or condi-
11 tioning of an APIC's license under subsection
12 ~~(b)(3)(B)~~, shall be due and payable, or otherwise
13 take effect, or be subject to enforcement by an order
14 of a court, until notice thereof is published in the
15 Federal Register.

16 ~~(3)(A)~~ The Secretary may suspend or condition
17 an APIC's license for up to 45 days without prior no-
18 tice in the Federal Register, but such suspension or
19 conditioning shall take effect only after the Sec-
20 retary has issued a written notice (including a writ-
21 ing in electronic form) of such action to the APIC.
22 Such written notice shall be effective without regard
23 to whether the APIC has been accorded the oppor-
24 tunity to respond. Such suspension or conditioning
25 shall be subject to enforcement by an order of a

1 court when the Secretary has issued such written
2 notice.

3 ~~(B)~~ After such suspension or conditioning takes
4 effect, the Secretary shall promptly cause a notice of
5 suspension or conditioning of such license for a pe-
6 riod of up to 90 days to be published in the Federal
7 Register. The APIC shall be entitled to respond to
8 such notice. In counting the time period of the sus-
9 pension or conditioning, the first day shall be the
10 day that written notice under this paragraph is
11 issued.

12 ~~(C)~~ During the time period of such suspension
13 or conditioning, the Secretary may proceed under
14 subsection (b)(2), and in accordance with the proce-
15 dures applicable to such subsection, to revoke the
16 APICs license. Only if the Secretary so proceeds,
17 notwithstanding any other provision of this section,
18 the Secretary may extend the suspension or condi-
19 tioning of the APICs license by publishing a notice
20 of such action in the Federal Register—

21 (i) for the first such extension, before the
22 period under subparagraph (B) expires; and

23 (ii) for any subsequent extensions of up to
24 90 days, before the preceding period of up to
25 90 days expires.

1 ~~(D)~~ The suspension or conditioning of an
 2 APICs license by the Secretary under this paragraph
 3 shall remain in effect in accordance with its terms
 4 until final adjudication in any litigation undertaken
 5 to challenge such suspension or conditioning, or rev-
 6 ocation, of an APICs license.

7 ***TITLE III—AMERICA’S PRIVATE***
 8 ***INVESTMENT COMPANIES***

9 ***SEC. 301. SHORT TITLE.***

10 *This title may be cited as the “America’s Private In-*
 11 *vestment Companies Act”.*

12 ***SEC. 302. FINDINGS AND PURPOSES.***

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

14 *(1) people living in distressed areas, both urban*
 15 *and rural, that are characterized by high levels of job-*
 16 *lessness, poverty, and low incomes have not benefited*
 17 *adequately from the economic expansion experienced*
 18 *by the Nation as a whole;*

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

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

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

2 (1) *license private for profit community develop-*
 3 *ment entities that will focus on making equity and*
 4 *credit investments for large-scale business develop-*
 5 *ments that benefit low-income communities;*

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

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

13 **SEC. 303. DEFINITIONS.**

14 *As used in this title:*

15 (1) *ADMINISTRATOR.*—*The term “Adminis-*
 16 *trator” means the Administrator of the Small Busi-*
 17 *ness Administration.*

18 (2) *AGENCY.*—*The term “agency” has the mean-*
 19 *ing given such term in section 551(1) of title 5,*
 20 *United States Code.*

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

1 (4) *COMMUNITY DEVELOPMENT ENTITY*.—The
 2 term “community development entity” means an en-
 3 tity the primary mission of which is serving or pro-
 4 viding investment capital for low-income commu-
 5 nities or low-income persons and which maintains ac-
 6 countability to residents of low-income communities.

7 (5) *HUD*.—The term “HUD” means the Sec-
 8 retary of Housing and Urban Development or the De-
 9 partment of Housing and Urban Development, as the
 10 context requires.

11 (6) *LICENSE*.—The term “license” means a li-
 12 cense issued by HUD as provided in section 304.

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

15 (A) a census tract or tracts that have—

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

19 (ii) a median family income that does
 20 not exceed 80 percent of the greater of (I)
 21 the median family income for the metropoli-
 22 tan area in which such census tract or
 23 tracts are located, or (II) the median family
 24 income for the State in which such census
 25 tract or tracts are located; or

1 (B) a property that was located on a mili-
 2 tary installation that was closed or realigned
 3 pursuant to title II of the Defense Authorization
 4 Amendments and Base Closure and Realignment
 5 Act (Public Law 100–526; 10 U.S.C. 2687 note),
 6 the Defense Base Closure and Realignment Act of
 7 1990 (part A of title XXIX of Public Law 101–
 8 510; 10 U.S.C. 2687 note), section 2687 of title
 9 10, United States Code, or any other similar law
 10 enacted after the date of the enactment of this
 11 Act that provides for closure or realignment of
 12 military installations.

13 (8) *LOW-INCOME PERSON*.—The term “low-in-
 14 come person” means a person who is a member of a
 15 low-income family, as such term is defined in section
 16 104 of the Cranston-Gonzalez National Affordable
 17 Housing Act (42 U.S.C. 12704).

18 (9) *PRIVATE EQUITY CAPITAL*.—

19 (A) *IN GENERAL*.—The term “private eq-
 20 uity capital”—

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

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

4 (iii) in the case of a limited liability
5 company entity, the equity investment of
6 the members of the limited liability com-
7 pany entity; and

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

12 (B) *EXCLUSIONS.*—Such term does not in-
13 clude any—

14 (i) funds borrowed by an entity from
15 any source or obtained through the issuance
16 of leverage; except that this clause may not
17 be construed to exclude amounts evidenced
18 by a legally binding and irrevocable invest-
19 ment commitment in the entity, or the use
20 by an entity of a pledge of such investment
21 commitment to obtain bridge financing
22 from a private lender to fund the entity's
23 activities on an interim basis; or

24 (ii) funds obtained directly or indi-
25 rectly from any Federal, State, or local gov-

1 *ernment or any government agency, except*
2 *for—*

3 *(I) funds invested by an employee*
4 *welfare benefit plan or pension plan;*
5 *and*

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

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

11 *(A) that, at the time that an investment is*
12 *made in the business or trade, is deriving at*
13 *least 50 percent of its gross income from the con-*
14 *duct of trade or business activities in low-income*
15 *communities;*

16 *(B) a substantial portion of the use of the*
17 *tangible property of which is used within low-in-*
18 *come communities;*

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

22 *(D) less than 5 percent of the aggregate*
23 *unadjusted bases of the property of which is at-*
24 *tributable to certain financial property, as the*
25 *Secretary shall set forth in regulations, or in col-*

1 *lectibles, other than collectibles held primarily*
 2 *for sale to customers.*

3 (11) *QUALIFIED DEBENTURE.*—*The term “quali-*
 4 *fied debenture” means a debt instrument having*
 5 *terms that meet the requirements established pursuant*
 6 *to section 306(c)(1).*

7 (12) *QUALIFIED LOW-INCOME COMMUNITY IN-*
 8 *VESTMENT.*—*The term “qualified low-income commu-*
 9 *nity investment” mean an equity investment in, or a*
 10 *loan to, a qualified active business.*

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

14 **SEC. 304. AUTHORIZATION.**

15 (a) *LICENSES.*—*The Secretary is authorized to license*
 16 *community development entities as America’s Private In-*
 17 *vestment Companies, in accordance with the terms of this*
 18 *title.*

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

1 *under this title, and may issue notices and other guidance*
 2 *or directives as the Secretary determines are appropriate*
 3 *to carry out such duties.*

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

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

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

14 *(B) to the extent the limitation under sec-*
 15 *tion 305(e)(1) applies, the number authorized*
 16 *under such section.*

17 *(2) USE OF ADDITIONAL CREDIT SUBSIDY.—Sub-*
 18 *ject to the limitation under paragraph (1), the Sec-*
 19 *retary may use any budget authority available after*
 20 *credit subsidy has been allocated for the APICs ini-*
 21 *tially licensed pursuant to section 305 as follows:*

22 *(A) ADDITIONAL LICENSES.—To license ad-*
 23 *ditional APICs.*

24 *(B) CREDIT SUBSIDY INCREASES.—To in-*
 25 *crease the credit subsidy allocated to an APIC as*

1 *an award for high performance under this title,*
2 *except that such increases may be made only in*
3 *accordance with the following requirements and*
4 *limitations:*

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

8 (ii) *COMPETITION.—An increase may*
9 *only be provided for a fiscal year pursuant*
10 *to a competition for such fiscal year among*
11 *APICs eligible for, and requesting, such an*
12 *increase. The competition shall be based*
13 *upon criteria that the Secretary shall estab-*
14 *lish, which shall include the financial*
15 *soundness and performance of the APICs, as*
16 *measured by achievement of the public per-*
17 *formance goals included in the APICs state-*
18 *ments required under section 305(a)(6) and*
19 *audits conducted under section 309(b)(2).*
20 *Among the criteria established by the Sec-*
21 *retary to determine priority for selection*
22 *under this section, the Secretary shall in-*
23 *clude making investments in and loans to*
24 *qualified active businesses in urban or rural*
25 *areas that have been designated under sub-*

1 *chapter U of Chapter 1 of the Internal Rev-*
2 *enue Code of 1986 as empowerment zones or*
3 *enterprise communities.*

4 (d) *COOPERATION AND COORDINATION.—*

5 (1) *PROGRAM POLICIES.—The Secretary is au-*
6 *thorized to coordinate and cooperate, through memo-*
7 *randa of understanding, an APIC liaison committee,*
8 *or otherwise, with the Administrator, the Secretary of*
9 *the Treasury, and other agencies in the discretion of*
10 *the Secretary, on implementation of this title, includ-*
11 *ing regulation, examination, and monitoring of*
12 *APICs under this title.*

13 (2) *FINANCIAL SOUNDNESS REQUIREMENTS.—*

14 *The Secretary shall consult with the Administrator*
15 *and the Secretary of the Treasury, and may consult*
16 *with such other heads of agencies as the Secretary*
17 *may consider appropriate, in establishing any regula-*
18 *tions, requirements, guidelines, or standards for fi-*
19 *nancial soundness or management practices of APICs*
20 *or entities applying for licensing as APICs. In imple-*
21 *menting and monitoring compliance with any such*
22 *regulations, requirements, guidelines, and standards,*
23 *the Secretary shall enter into such agreements and*
24 *memoranda of understanding with the Administrator*
25 *and the Secretary of the Treasury as may be appro-*

1 *priate to provide for such officials to provide any as-*
 2 *sistance that may be agreed to.*

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

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

8 (B) *indirectly, under contracts or agree-*
 9 *ments, as the Secretary shall determine.*

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

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

19 (g) *FUNDING.—*

20 (1) *AUTHORIZATION OF APPROPRIATIONS FOR*
 21 *LOAN GUARANTEE COMMITMENTS.—For each of fiscal*
 22 *years 2000, 2001, 2002, 2003, and 2004, there is au-*
 23 *thorized to be appropriated up to \$36,000,000 for the*
 24 *cost (as such term is defined in section 502(5) of the*
 25 *Federal Credit Reform Act of 1990) of annual loan*

1 *guarantee commitments under this title. Amounts ap-*
 2 *propriated under this paragraph shall remain avail-*
 3 *able until expended.*

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

11 (3) *AUTHORIZATION OF APPROPRIATIONS FOR*
 12 *ADMINISTRATIVE EXPENSES.—For each of the fiscal*
 13 *years 2000, 2001, 2002, 2003, and 2004, there is au-*
 14 *thorized to be appropriated \$1,000,000 for adminis-*
 15 *trative expenses for carrying out this title. The Sec-*
 16 *retary may transfer amounts appropriated under this*
 17 *paragraph to any appropriation account of HUD or*
 18 *another agency, to carry out the program under this*
 19 *title. Any agency to which the Secretary may transfer*
 20 *amounts under this title is authorized to accept such*
 21 *transferred amounts in any appropriation account of*
 22 *such agency.*

23 **SEC. 305. SELECTION OF APICS.**

24 (a) *ELIGIBLE APPLICANTS.—An entity shall be eligible*
 25 *to be selected for licensing under section 304 as an APIC*

1 *only if the entity submits an application in compliance*
2 *with the requirements established pursuant to subsection (b)*
3 *and the entity meets or complies with the following require-*
4 *ments:*

5 (1) *ORGANIZATION.—The entity shall be a pri-*
6 *vate, for-profit entity that qualifies as a community*
7 *development entity for the purposes of the New Mar-*
8 *kets Tax Credits, to the extent such credits are estab-*
9 *lished under Federal law.*

10 (2) *MINIMUM PRIVATE EQUITY CAPITAL.—The*
11 *amount of private equity capital reasonably available*
12 *to the entity, as determined by the Secretary, at the*
13 *time that a license is approved may not be less than*
14 *\$25,000,000.*

15 (3) *QUALIFIED MANAGEMENT.—The management*
16 *of the entity shall, in the determination of the Sec-*
17 *retary, meet such standards as the Secretary shall es-*
18 *tablish to ensure that the management of the APIC is*
19 *qualified, and has the financial expertise, knowledge,*
20 *experience, and capability necessary, to make invest-*
21 *ments for community and economic development in*
22 *low-income communities.*

23 (4) *CONFLICT OF INTEREST.—The entity shall*
24 *demonstrate that, in accordance with sound financial*
25 *management practices, the entity is structured to pre-*

1 *clude financial conflict of interest between the APIC*
2 *and a manager or investor.*

3 (5) *INVESTMENT STRATEGY.—The entity shall*
4 *prepare and submit to the Secretary an investment*
5 *strategy that includes benchmarks for evaluation of*
6 *its progress, that includes an analysis of existing lo-*
7 *cally owned businesses in the communities in which*
8 *the investments under the strategy will be made, that*
9 *prioritizes such businesses for investment opportuni-*
10 *ties, and that fulfills the specific public purpose goals*
11 *of the entity.*

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

16 (A) *set forth goals that shall promote com-*
17 *munity and economic development, which shall*
18 *include—*

19 (i) *making investments in low-income*
20 *communities that further economic develop-*
21 *ment objectives by targeting such invest-*
22 *ments in businesses or trades that comply*
23 *with the requirements under subparagraphs*
24 *(A) through (C) of section 303(10) relating*

1 *to low-income communities in a manner*
2 *that benefits low-income persons;*

3 (ii) *creating jobs in low-income com-*
4 *munities for residents of such communities;*

5 (iii) *involving community-based orga-*
6 *nizations and residents in community de-*
7 *velopment activities;*

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

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

13 (B) *include such other elements as the Sec-*
14 *retary shall specify; and*

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

17 (7) *COMPLIANCE WITH LAWS.—The entity shall*
18 *agree to comply with applicable laws, including Fed-*
19 *eral executive orders, Office of Management and*
20 *Budget circulars, and requirements of the Department*
21 *of the Treasury, and such operating and regulatory*
22 *requirements as the Secretary may impose from time*
23 *to time.*

1 (8) *OTHER.*—*The entity shall satisfy any other*
2 *application requirements that the Secretary may im-*
3 *pose by regulation or Federal Register notice.*

4 (b) *COMPETITIONS.*—*The Secretary shall select eligible*
5 *entities under subsection (a) to be licensed under section*
6 *304 as APICs on the basis of competitions. The Secretary*
7 *shall announce each such competition by causing a notice*
8 *to be published in the Federal Register that invites applica-*
9 *tions for licenses and sets forth the requirements for appli-*
10 *cation and such other terms of the competition not otherwise*
11 *provided for, as determined by the Secretary.*

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

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

18 (2) *to the extent practicable and subject to the*
19 *existence of approvable applications, ensuring geo-*
20 *graphical diversity among the applicants selected and*
21 *diversity of APICs investment strategies, so that*
22 *urban and rural communities are both served, in the*
23 *determination of the Secretary, by the program under*
24 *this title.*

1 (d) *SELECTION CRITERIA.*—*The Secretary shall estab-*
 2 *lish selection criteria for competitions under subsection (b),*
 3 *which shall include the following criteria:*

4 (1) *CAPACITY.*—

5 (A) *MANAGEMENT.*—*The extent to which the*
 6 *entity’s management has the quality, experience,*
 7 *and expertise to make and manage successful in-*
 8 *vestments for community and economic develop-*
 9 *ment in low-income communities.*

10 (B) *STATE AND LOCAL COOPERATION.*—*The*
 11 *extent to which the entity demonstrates a capac-*
 12 *ity to cooperate with States or units of general*
 13 *local government and with community-based or-*
 14 *ganizations and residents of low-income commu-*
 15 *nities.*

16 (2) *INVESTMENT STRATEGY.*—*The quality of the*
 17 *entity’s investment strategy submitted in accordance*
 18 *with subsection (a)(5) and the extent to which the in-*
 19 *vestment strategy furthers the goals of this title pursu-*
 20 *ant to paragraph (3) of this subsection.*

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

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

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

7 (i) creating, within 2 years of the com-
8 pletion of the initial such investment, job
9 opportunities, opportunities for ownership,
10 and other economic opportunities within a
11 low-income community, both short-term and
12 of a longer duration;

13 (ii) improving the economic vitality of
14 a low-income community, including stimu-
15 lating other business development;

16 (iii) bringing new income into a low-
17 income community and assisting in the re-
18 vitalization of such community;

19 (iv) converting real property for the
20 purpose of creating a site for business incu-
21 bation and location, or business district re-
22 vitalization;

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

25 (vi) rural development;

1 (vii) mitigating, rehabilitating, and
2 reusing real property considered subject to
3 the Solid Waste Disposal Act (42 U.S.C.
4 6901 et seq.; commonly referred to as the
5 Resource Conservation and Recovery Act) or
6 restoring coal mine-scarred land;

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

10 (ix) any other objective that the Sec-
11 retary may establish to further the purposes
12 of this title;

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

19 (D) the extent to which achievement of such
20 goals will involve community-based organiza-
21 tions and residents in community development
22 activities; and

23 (E) the extent to which the investments re-
24 ferred to in subparagraph (B) are likely to ben-
25 efit existing small business in low-income com-

1 *munities or will encourage the growth of small*
 2 *business in such communities.*

3 (4) *OTHER.—Any other criteria that the Sec-*
 4 *retary may establish to carry out the purposes of this*
 5 *title.*

6 (e) *FIRST YEAR REQUIREMENTS.—*

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

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

16 (3) *NATIVE AMERICAN PRIVATE INVESTMENT*
 17 *COMPANY.—Subject only to the absence of an approv-*
 18 *able application from an entity, during the 1-year pe-*
 19 *riod referred to in paragraph (1), of the entities se-*
 20 *lected and licensed by the Secretary as APICs, at*
 21 *least one shall be an entity that has as its primary*
 22 *purpose the making of qualified low-income commu-*
 23 *nity investments in areas that are within Indian*
 24 *country (as such term is defined in section 1151 of*
 25 *title 18, United States Code) or within lands that*

1 *have status as Hawaiian home land under section*
 2 *204 of the Hawaiian Homes Commission Act, 1920*
 3 *(42 Stat. 108) or are acquired pursuant to such Act.*
 4 *The Secretary may establish specific selection criteria*
 5 *for applicants under this paragraph.*

6 (f) *COMMUNICATIONS BETWEEN HUD AND APPLI-*
 7 *CANTS.—*

8 (1) *IN GENERAL.—The Secretary shall set forth*
 9 *in regulations the procedures under which HUD and*
 10 *applicants for APIC licenses, and others, may com-*
 11 *municate. Such regulations shall—*

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

15 (B) *permit HUD officers and employees to*
 16 *request and discuss with the applicant and oth-*
 17 *ers (such as banks or other credit or business ref-*
 18 *erences, or potential investors, that the applicant*
 19 *specifies in writing) any more detailed informa-*
 20 *tion that may be desirable to facilitate HUD's*
 21 *review of the applicant's application;*

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

24 (i) *the fact or chances of award of a li-*
 25 *cense to such applicant, unless there has*

1 *been a public announcement of the results of*
 2 *the competition; and*

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

5 *(D) set forth requirements for making and*
 6 *keeping records of any communications con-*
 7 *ducted under this subsection, including require-*
 8 *ments for making such records available to the*
 9 *public after the award of licenses under an ini-*
 10 *tial or subsequent notice, as appropriate, under*
 11 *subsection (a).*

12 *(2) TIMING.—Regulations under this subsection*
 13 *may be issued as interim rules for effect on or before*
 14 *the date of publication of the first notice under sub-*
 15 *section (a), and shall apply only with respect to ap-*
 16 *plications under such notice. Regulations to imple-*
 17 *ment this subsection with respect to any notice after*
 18 *the first such notice shall be subject to notice and*
 19 *comment rulemaking.*

20 *(3) INAPPLICABILITY OF DEPARTMENT OF HUD*
 21 *ACT PROVISION.—Section 12(e)(2) of the Department*
 22 *of Housing and Urban Development Act (42 U.S.C.*
 23 *3537a(e)(2)) is amended by inserting before the pe-*
 24 *riod at the end the following: “or any license provided*

1 *under the America's Private Investment Companies*
 2 *Act*".

3 **SEC. 306. OPERATIONS OF APICS.**

4 *(a) POWERS AND AUTHORITIES.—*

5 *(1) IN GENERAL.—An APIC shall have any pow-*
 6 *ers or authorities that—*

7 *(A) the APIC derives from the jurisdiction*
 8 *in which it is organized, or that the APIC other-*
 9 *wise has;*

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

12 *(C) the Secretary may prescribe by regula-*
 13 *tion.*

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

20 *(b) INVESTMENT LIMITATIONS.—*

21 *(1) QUALIFIED LOW-INCOME COMMUNITY INVEST-*
 22 *MENTS.—Substantially all investments that an APIC*
 23 *makes shall be qualified low-income community in-*
 24 *vestments if the investments are financed with—*

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

4 (B) proceeds of the sale of obligations de-
 5 scribed under subsection (c)(3)(C)(iii); or

6 (C) the use of private equity capital, as de-
 7 termined by the Secretary, in an amount speci-
 8 fied in the APIC's license.

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

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

14 (B) an amount equal to the percentage limit
 15 that the Secretary determines that an APIC may
 16 have outstanding at any one time, under sub-
 17 section (c)(2)(A).

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

19 (1) *ISSUANCE.*—An APIC may issue qualified
 20 debentures. The Secretary shall, by regulation, specify
 21 the terms and requirements for debentures to be con-
 22 sidered qualified debentures for purposes of this title,
 23 except that the term to maturity of any qualified de-
 24 benture may not exceed 21 years and each qualified
 25 debenture shall bear interest during all or any part

1 *of that time period at a rate or rates approved by the*
2 *Secretary.*

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

5 (A) *the total amount of qualified debentures*
6 *that an APIC issues under this title that an*
7 *APIC may have outstanding at any one time*
8 *shall not exceed an amount equal to 200 percent*
9 *of the private equity capital of the APIC, as de-*
10 *termined by the Secretary; and*

11 (B) *an APIC shall not have more than*
12 *\$300,000,000 in face value of qualified deben-*
13 *tures issued under this title outstanding at any*
14 *one time.*

15 (3) *REPAYMENT.—*

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

23 (B) *TIMING.—An APIC may repay any in-*
24 *terest or principal amounts of borrowings under*
25 *this subsection at any time: Provided, That the*

1 *repayment of such amounts shall not relieve an*
 2 *APIC of any duty otherwise applicable to the*
 3 *APIC under this title, unless the Secretary or-*
 4 *ders such relief.*

5 *(C) USE OF INVESTMENT PROCEEDS BE-*
 6 *FORE REPAYMENT.—Until an APIC has repaid*
 7 *all interest and principal amounts on APIC bor-*
 8 *rowings under this subsection, an APIC may use*
 9 *the proceeds of investments, in accordance with*
 10 *regulations issued by the Secretary, only to—*

11 *(i) pay for proper costs and expenses*
 12 *the APIC incurs in connection with such*
 13 *investments;*

14 *(ii) pay for the reasonable administra-*
 15 *tive expenses of the APIC;*

16 *(iii) purchase Treasury securities;*

17 *(iv) repay interest and principal*
 18 *amounts on APIC borrowings under this*
 19 *subsection;*

20 *(v) make interest, dividend, or other*
 21 *distributions to or on behalf of an investor;*
 22 *or*

23 *(vi) undertake such other purposes as*
 24 *the Secretary may approve.*

1 (D) *USE OF INVESTMENT PROCEEDS AFTER*
 2 *REPAYMENT.*—*After an APIC has repaid all in-*
 3 *terest and principal amounts on APIC bor-*
 4 *rowings under this subsection, and subject to*
 5 *continuing compliance with subsection (a), the*
 6 *APIC may use the proceeds from investments to*
 7 *make interest, dividend, or other distributions to*
 8 *or on behalf of investors in the nature of returns*
 9 *on capital, or the withdrawal of private equity*
 10 *capital, without regard to subparagraph (C) but*
 11 *in conformity with the APIC’s investment strat-*
 12 *egy and statement of public purpose goals.*

13 (d) *REUSE OF QUALIFIED DEBENTURE PROCEEDS.*—
 14 *An APIC may use the proceeds of sale of Treasury securities*
 15 *purchased under subsection (c)(3)(C)(iii) to make qualified*
 16 *low-income community investments, subject to the Sec-*
 17 *retary’s approval. In making the request for the Secretary’s*
 18 *approval, the APIC shall follow the procedures applicable*
 19 *to an APIC’s request for HUD guarantee action, as the Sec-*
 20 *retary may modify such procedures for implementation of*
 21 *this subsection. Such procedures shall include the descrip-*
 22 *tion and certifications that an APIC must include in all*
 23 *requests for guarantee action, and the environmental certifi-*
 24 *cation applicable to initial expenditures for a project or ac-*
 25 *tivity.*

1 (e) *ANTIPIRATING.*—Notwithstanding any other provi-
 2 sion of law, an APIC may not use any private equity cap-
 3 ital required to be contributed under this title, or the pro-
 4 ceeds from the sale of any qualified debenture under this
 5 title, to make an investment, as determined by the Sec-
 6 retary, to assist directly in the relocation of any industrial
 7 or commercial plant, facility, or operation, from 1 area to
 8 another area, if the relocation is likely to result in a signifi-
 9 cant loss of employment in the labor market area from
 10 which the relocation occurs.

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

17 **SEC. 307. CREDIT ENHANCEMENT BY THE FEDERAL GOV-**
 18 **ERNMENT.**

19 (a) *ISSUANCE AND GUARANTEE OF QUALIFIED DE-*
 20 *BENTURES.*—

21 (1) *AUTHORITY.*—To the extent consistent with
 22 the Federal Credit Reform Act of 1990, the Secretary
 23 is authorized to make commitments to guarantee and
 24 guarantee the timely payment of all principal and
 25 interest as scheduled on qualified debentures issued by

1 *APICs. Such commitments and guarantees may only*
2 *be made in accordance with the terms and conditions*
3 *established under paragraph (2).*

4 (2) *TERMS AND CONDITIONS.—The Secretary*
5 *shall establish such terms and conditions as the Sec-*
6 *retary determines to be appropriate for commitments*
7 *and guarantees under this subsection, including terms*
8 *and conditions relating to amounts, expiration, num-*
9 *ber, priorities of repayment, security, collateral, am-*
10 *ortization, payment of interest (including the timing*
11 *thereof), and fees and charges. The terms and condi-*
12 *tions applicable to any particular commitment or*
13 *guarantee may be established in documents that the*
14 *Secretary approves for such commitment or guar-*
15 *antee.*

16 (3) *SENIORITY.—Notwithstanding any other pro-*
17 *vision of Federal law or any law or the constitution*
18 *of any State, qualified debentures guaranteed under*
19 *this subsection by the Secretary shall be senior to any*
20 *other debt obligation, equity contribution or earnings,*
21 *or the distribution of dividends, interest, or other*
22 *amounts, of an APIC.*

23 (b) *ISSUANCE OF TRUST CERTIFICATES.—The Sec-*
24 *retary, or an agent or entity selected by the Secretary, is*
25 *authorized to issue trust certificates representing ownership*

1 *of all or a fractional part of guaranteed qualified debentures*
 2 *issued by APICs and held in trust.*

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

4 (1) *IN GENERAL.*—*The Secretary is authorized,*
 5 *upon such terms and conditions as the Secretary de-*
 6 *termines to be appropriate, to guarantee the timely*
 7 *payment of the principal of and interest on trust cer-*
 8 *tificates issued by the Secretary, or an agent or other*
 9 *entity, for purposes of this section. Such guarantee*
 10 *shall be limited to the extent of principal and interest*
 11 *on the guaranteed qualified debentures which compose*
 12 *the trust.*

13 (2) *SUBSTITUTION OPTION.*—*The Secretary shall*
 14 *have the option to replace in the corpus of the trust*
 15 *any prepaid or defaulted qualified debenture with a*
 16 *debenture, another full faith and credit instrument, or*
 17 *any obligations of the United States, that may rea-*
 18 *sonably substitute for such prepaid or defaulted quali-*
 19 *fied debenture.*

20 (3) *PROPORTIONATE REDUCTION OPTION.*—*In*
 21 *the event that the Secretary elects not to exercise the*
 22 *option under paragraph (2), and a qualified deben-*
 23 *ture in such trust is prepaid, or in the event of de-*
 24 *fault of a qualified debenture, the guarantee of timely*
 25 *payment of principal and interest on the trust certifi-*

1 *cate shall be reduced in proportion to the amount of*
 2 *principal and interest that such prepaid qualified de-*
 3 *benture represents in the trust. Interest on prepaid or*
 4 *defaulted qualified debentures shall accrue and be*
 5 *guaranteed by the Secretary only through the date of*
 6 *payment of the guarantee. During the term of a trust*
 7 *certificate, it may be called for redemption due to*
 8 *prepayment or default of all qualified debentures that*
 9 *are in the corpus of the trust.*

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

15 *(e) SUBROGATION AND LIENS.—*

16 *(1) SUBROGATION.—In the event the Secretary*
 17 *pays a claim under a guarantee issued under this sec-*
 18 *tion, the Secretary shall be subrogated fully to the*
 19 *rights satisfied by such payment.*

20 *(2) PRIORITY OF LIENS.—No State or local law,*
 21 *and no Federal law, shall preclude or limit the exer-*
 22 *cise by the Secretary of its ownership rights in the de-*
 23 *bentures in the corpus of a trust under this section.*

24 *(f) REGISTRATION.—*

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

4 (2) *AGENTS.*—*The Secretary may contract with*
 5 *an agent or agents to carry out on behalf of the Sec-*
 6 *retary the pooling and the central registration func-*
 7 *tions of this section notwithstanding any other provi-*
 8 *sion of law, including maintenance on behalf of and*
 9 *under the direction of the Secretary, such commercial*
 10 *bank accounts or investments in obligations of the*
 11 *United States as may be necessary to facilitate trusts*
 12 *backed by qualified debentures guaranteed under this*
 13 *title and the issuance of trust certificates to facilitate*
 14 *formation of the corpus of the trusts. The Secretary*
 15 *may require such agent or agents to provide a fidelity*
 16 *bond or insurance in such amounts as the Secretary*
 17 *determines to be necessary to protect the interests of*
 18 *the Government.*

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

22 (g) *TIMING OF ISSUANCE OF GUARANTEES OF QUALI-*
 23 *FIED DEBENTURES AND TRUST CERTIFICATES.*—*The Sec-*
 24 *retary may, from time to time in the Secretary's discretion,*

1 *exercise the authority to issue guarantees of qualified debentures under this title or trust certificates under this title.*

3 **SEC. 308. APIC REQUESTS FOR GUARANTEE ACTIONS.**

4 (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—*

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

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

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

20 (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 satis-*

1 *faction of any financial audit exception that*
 2 *may have been outstanding; and*

3 (C) *all requirements relating to the alloca-*
 4 *tion and use of New Markets Tax Credits, to the*
 5 *extent such credits are established under Federal*
 6 *law; and*

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

9 (b) *REQUESTS FOR GUARANTEE OF QUALIFIED DE-*
 10 *BENTURES THAT INCLUDE FUNDING FOR INITIAL EXPEND-*
 11 *ITURE FOR A PROJECT OR ACTIVITY.—In addition to the*
 12 *description and certification that an APIC is required to*
 13 *supply in all requests for guarantee action under subsection*
 14 *(a), in the case of an APIC's request for a guarantee that*
 15 *includes a qualified debenture, the proceeds of which the*
 16 *APIC expects to be used as its initial expenditure for a*
 17 *project or activity in which the APIC intends to invest, and*
 18 *the expenditure for which would require an environmental*
 19 *assessment under the National Environmental Policy Act*
 20 *of 1969 and other related laws that further the purposes*
 21 *of such Act, such request for guarantee action shall include*
 22 *evidence satisfactory to the Secretary of the certification of*
 23 *the completion of environmental review of the project or ac-*
 24 *tivity required of the cognizant State or local government*
 25 *under subsection (c). If the environmental review responsi-*

1 bility for the project or activity has not been assumed by
 2 a State or local government under subsection (c), then the
 3 Secretary shall be responsible for carrying out the applica-
 4 ble responsibilities under the National Environmental Pol-
 5 icy Act of 1969 and other provisions of law that further
 6 the purposes of such Act that relate to the project or activity,
 7 and the Secretary shall execute such responsibilities before
 8 acting on the APIC's request for the guarantee that is cov-
 9 ered by this subsection.

10 (c) *RESPONSIBILITY FOR ENVIRONMENTAL RE-*
 11 *VIEWS.—*

12 (1) *EXECUTION OF RESPONSIBILITY BY THE SEC-*
 13 *RETARY.—This subsection shall apply to guarantees*
 14 *by the Secretary of qualified debentures under this*
 15 *title, the proceeds of which would be used in connec-*
 16 *tion with qualified low-income community invest-*
 17 *ments of APICs under this title.*

18 (2) *ASSUMPTION OF RESPONSIBILITY BY COG-*
 19 *NIZANT UNIT OF GENERAL GOVERNMENT.—*

20 (A) *GUARANTEE OF QUALIFIED DEBEN-*
 21 *TURES.—In order to assure that the policies of*
 22 *the National Environmental Policy Act of 1969*
 23 *and other provisions of law that further the pur-*
 24 *poses of such Act (as specified in regulations*
 25 *issued by the Secretary) are most effectively im-*

1 *plemented in connection with the expenditure of*
2 *funds under this title, and to assure to the public*
3 *undiminished protection of the environment, the*
4 *Secretary may, under such regulations, in lieu of*
5 *the environmental protection procedures other-*
6 *wise applicable, provide for the guarantee of*
7 *qualified debentures, any part of the proceeds of*
8 *which are to fund particular qualified low-in-*
9 *come community investments of APICs under*
10 *this title, if a State or unit of general local gov-*
11 *ernment, as designated by the Secretary in ac-*
12 *cordance with regulations issued by the Sec-*
13 *retary, assumes all of the responsibilities for en-*
14 *vironmental review, decisionmaking, and action*
15 *pursuant to the National Environmental Policy*
16 *Act of 1969 and such other provisions of law*
17 *that further such Act as the regulations of the*
18 *Secretary specify, that would otherwise apply to*
19 *the Secretary were the Secretary to undertake the*
20 *funding of such investments as a Federal action.*

21 *(B) IMPLEMENTATION.—The Secretary shall*
22 *issue regulations to carry out this subsection*
23 *only after consultation with the Council on En-*
24 *vironmental Quality. Such regulations shall—*

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

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

10 (iii) *specify the purposes for which*
 11 *funds may be committed without regard to*
 12 *the procedure established under paragraph*
 13 *(3);*

14 (iv) *provide for monitoring of the per-*
 15 *formance of environmental reviews under*
 16 *this subsection;*

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

20 (vi) *subject to the discretion of the Sec-*
 21 *retary, provide for suspension or termi-*
 22 *nation by the Secretary of the assumption*
 23 *under subparagraph (A).*

24 (C) *RESPONSIBILITIES OF STATES AND*
 25 *UNITS OF GENERAL LOCAL GOVERNMENT.—The*

1 *Secretary's duty under subparagraph (B) shall*
2 *not be construed to limit any responsibility as-*
3 *sumed by a State or unit of general local govern-*
4 *ment with respect to any particular request for*
5 *guarantee under subparagraph (A), or the use of*
6 *funds for a qualified investment.*

7 *(3) PROCEDURE.—Subject to compliance by the*
8 *APIC with the requirements of this title, the Sec-*
9 *retary shall approve the request for guarantee of a*
10 *qualified debenture, any part of the proceeds of which*
11 *is to fund particular qualified low-income community*
12 *investments of an APIC under this title, that is sub-*
13 *ject to the procedures authorized by this subsection*
14 *only if, not less than 15 days prior to such approval*
15 *and prior to any commitment of funds to such invest-*
16 *ment (except for such purposes specified in the regula-*
17 *tions issued under paragraph (2)(B)), the APIC sub-*
18 *mits to the Secretary a request for guarantee of a*
19 *qualified debenture that is accompanied by evidence*
20 *of a certification of the State or unit of general local*
21 *government which meets the requirements of para-*
22 *graph (4). The approval by the Secretary of any such*
23 *certification shall be deemed to satisfy the Secretary's*
24 *responsibilities pursuant to paragraph (1) under the*
25 *National Environmental Policy Act of 1969 and such*

1 *other provisions of law as the regulations of the Sec-*
2 *retary specify insofar as those responsibilities relate*
3 *to the guarantees of qualified debentures, any parts of*
4 *the proceeds of which are to fund such investments,*
5 *which are covered by such certification.*

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

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

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

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

17 (D) *specify that the certifying officer—*

18 (i) *consents to assume the status of a*
19 *responsible Federal official under the Na-*
20 *tional Environmental Policy Act of 1969*
21 *and each provision of law specified in regu-*
22 *lations issued by the Secretary insofar as*
23 *the provisions of such Act or other such pro-*
24 *vision of law apply pursuant to paragraph*
25 *(2); and*

1 (ii) is authorized and consents on be-
 2 half of the State or unit of general local
 3 government and himself or herself to accept
 4 the jurisdiction of the Federal courts for the
 5 purpose of enforcement of the responsibil-
 6 ities as such an official.

7 **SEC. 309. EXAMINATION AND MONITORING OF APICS.**

8 (a) *IN GENERAL.*—The Secretary shall, under regula-
 9 tions, through audits, performance agreements, license con-
 10 ditions, or otherwise, examine and monitor the operations
 11 and activities of APICs for compliance with sound finan-
 12 cial management practices, and for satisfaction of the pro-
 13 gram and procedural goals of this title and other related
 14 Acts. The Secretary may undertake any responsibility
 15 under this section in cooperation with an APIC liaison
 16 committee, or any agency that is a member of such a com-
 17 mittee, or other agency.

18 (b) *MONITORING, UPDATING, AND PROGRAM RE-*
 19 *VIEW.*—

20 (1) *REPORTING AND UPDATING.*—The Secretary
 21 shall establish such annual or more frequent reporting
 22 requirements for APICs, and such requirements for
 23 the updating of the statement of public purpose goals,
 24 investment strategy (including the benchmarks in
 25 such strategy), and other documents that may have

1 *been used in the license application process under this*
2 *title, as the Secretary determines necessary to assist*
3 *the Secretary in monitoring the compliance and per-*
4 *formance of APICs.*

5 (2) *ANNUAL AUDITS.—The Secretary shall re-*
6 *quire each APIC to have an independent audit con-*
7 *ducted annually of the operations of the APIC. The*
8 *Secretary, in consultation with the Administrator*
9 *and the Secretary of the Treasury, shall establish re-*
10 *quirements and standards for such audits, including*
11 *requirements that such audits be conducted in accord-*
12 *ance with generally accepted accounting principles,*
13 *that the APIC submit the results of the audit to Sec-*
14 *retary, and that specify the information to be sub-*
15 *mitted.*

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

21 (4) *EXAMINATION STANDARDS.—*

22 (A) *SOUND FINANCIAL MANAGEMENT PRAC-*
23 *TICES.—The Secretary shall examine each APIC*
24 *to ensure, as a matter of sound financial man-*
25 *agement practices, substantial compliance with*

1 *this and other applicable laws, including Federal*
2 *executive orders, Department of Treasury and*
3 *Office of Management and Budget guidance, cir-*
4 *culars, and application and licensing require-*
5 *ments on a continuing basis. The Secretary may,*
6 *by regulation, establish any additional standards*
7 *for sound financial management practices, in-*
8 *cluding standards that address solvency and fi-*
9 *nancial exposure.*

10 *(B) PERFORMANCE AND OTHER EXAMINA-*
11 *TIONS.—The Secretary shall monitor each*
12 *APIC's progress in meeting the goals in the*
13 *APIC's statement of public purpose goals, exe-*
14 *cuting the APIC's investment strategy, and other*
15 *matters.*

16 *(c) INSPECTOR GENERAL RESPONSIBILITY.—In car-*
17 *rying out monitoring of HUD's responsibilities under this*
18 *title and for purposes of ensuring that the program under*
19 *this title is operated in accordance with sound financial*
20 *management practices, the Inspector General of the Depart-*
21 *ment of Housing and Urban Development shall consult with*
22 *the Inspector General of the Department of the Treasury*
23 *and the Inspector General of the Small Business Adminis-*
24 *tration, as appropriate, and may enter into such agree-*
25 *ments and memoranda of understanding as may be nec-*

1 *essary to obtain the cooperation of the Inspectors General*
2 *of the Department of the Treasury and the Small Business*
3 *Administration in carrying out such function.*

4 (d) *ANNUAL REPORT BY SECRETARY.*—*The Secretary*
5 *shall submit a report to the Congress annually regarding*
6 *the operations, activities, financial health, and achieve-*
7 *ments of the APIC program under this title. The report*
8 *shall list each investment made by an APIC and include*
9 *a summary of the examinations conducted under subsection*
10 *(b)(3), the guarantee actions of HUD, and any regulatory*
11 *or policy actions taken by HUD. The report shall distin-*
12 *guish recently licensed APICs from APICs that have held*
13 *licenses for a longer period for purposes of indicating pro-*
14 *gram activities and performance.*

15 (e) *GAO REPORT.*—

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

22 (2) *CONTENTS.*—*The report shall include—*

23 (A) *an analysis of the operations and moni-*
24 *toring by HUD of the APIC program under this*
25 *title;*

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

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

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

9 **SEC. 310. PENALTIES.**

10 (a) *VIOLATIONS SUBJECT TO PENALTY.*—The Sec-
 11 retary may impose a penalty under this subsection on any
 12 APIC or manager of an APIC that, by any act, practice,
 13 or failure to act, engages in fraud, mismanagement, or non-
 14 compliance with this title, the regulations under this title,
 15 or a condition of the APIC’s license under this title. The
 16 Secretary shall, by regulation, identify, by generic descrip-
 17 tion of a role or responsibilities, any manager of an APIC
 18 that is subject to a penalty under this section.

19 (b) *PENALTIES REQUIRING NOTICE AND AN OPPOR-*
 20 *TUNITY TO RESPOND.*—If, after notice in writing to an
 21 APIC or the manager of an APIC that the APIC or man-
 22 ager has engaged in any action, practice, or failure to act
 23 that, under subsection (a), is subject to a penalty, and after
 24 an opportunity for the APIC or manager to respond to the
 25 notice, the Secretary determines that the APIC or manager

1 *engaged in such action or failure to act, the Secretary may,*
 2 *in addition to other penalties imposed—*

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

6 *(2) issue an order to cease and desist with re-*
 7 *spect to such action, practice, or failure to act of the*
 8 *APIC or manager;*

9 *(3) suspend, or condition the use of, the APIC's*
 10 *license, including deferring, for the period of the sus-*
 11 *pension, any commitment to guarantee any new*
 12 *qualified debenture of the APIC, except that any sus-*
 13 *pension or condition under this paragraph may not*
 14 *exceed 90 days; and*

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

18 *(c) PENALTIES REQUIRING NOTICE AND HEARING.—*
 19 *If, after notice in writing to an APIC or the manager of*
 20 *an APIC that an APIC or manager has engaged in any*
 21 *action, practice, or failure to act that, under subsection (a),*
 22 *is subject to a penalty, and after an opportunity for admin-*
 23 *istrative hearing, the Secretary determines that the APIC*
 24 *or manager engaged in such action or failure to act, the*
 25 *Secretary may—*

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

3 (2) *require the APIC to divest any interest in an*
 4 *investment, on such terms and conditions as the Sec-*
 5 *retary may impose; or*

6 (3) *revoke the APIC's license.*

7 (d) *EFFECTIVE DATE OF PENALTIES.—*

8 (1) *PRIOR NOTICE REQUIREMENT.—Except as*
 9 *provided in paragraph (2) of this subsection, a pen-*
 10 *alty under subsection (b) or (c) shall not be due and*
 11 *payable and shall not otherwise take effect or be sub-*
 12 *ject to enforcement by an order of a court, before no-*
 13 *tice of the penalty is published in the Federal Reg-*
 14 *ister.*

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

20 (A) *ACTION WITHOUT PUBLISHED NO-*
 21 *TICE.—The Secretary may order an APIC or*
 22 *manager to cease and desist from an action,*
 23 *practice, or failure to act or may suspend or*
 24 *condition an APIC's license, for not more than*
 25 *45 days without prior publication of notice in*

1 *the Federal Register, but such cease-and-desist*
2 *order or suspension or conditioning shall take ef-*
3 *fect only after the Secretary has issued a written*
4 *notice (which may include a writing in elec-*
5 *tronic form) of such action to the APIC. Not-*
6 *withstanding subsection (b), such written notice*
7 *shall be effective without regard to whether the*
8 *APIC has been accorded an opportunity to re-*
9 *spond. Upon such notice, such cease-and-desist*
10 *order or suspension or conditioning shall be sub-*
11 *ject to enforcement by an order of a court.*

12 *(B) PUBLICATION OF NOTICE OF SUSPEN-*
13 *SION OR CONDITIONING OF LICENSE.—Upon a*
14 *suspension or conditioning of a license taking ef-*
15 *fect pursuant to subparagraph (A), the Secretary*
16 *shall promptly cause a notice of suspension or*
17 *conditioning of such license for a period of not*
18 *more than 90 days to be published in the Federal*
19 *Register. The Secretary shall provide the APIC*
20 *an opportunity to respond to such notice. For*
21 *purposes of the determining the duration of the*
22 *period of any suspension or conditioning under*
23 *this subparagraph, the first day of such period*
24 *shall be the day of issuance of the written notice*

1 *under this paragraph of the suspension or condi-*
2 *tioning.*

3 (C) *REVOCATION OF LICENSE.*—*During the*
4 *period of the suspension or conditioning of an*
5 *APIC's license, the Secretary may take action*
6 *under subsection (c)(3) to revoke the license of*
7 *the APIC, in accordance with the procedures ap-*
8 *plicable to such subsection. Notwithstanding any*
9 *other provision of this section, if the Secretary*
10 *takes such action, the Secretary may extend the*
11 *suspension or conditioning of the APIC's license,*
12 *for one or more periods of not more than 90 days*
13 *each, by causing notice of such action to be pub-*
14 *lished in the Federal Register—*

15 (i) *for the first such extension, before*
16 *the expiration of the period under subpara-*
17 *graph (B); and*

18 (ii) *for any subsequent extension, be-*
19 *fore the expiration of the preceding exten-*
20 *sion period under this subparagraph.*

21 (D) *TERM OF EFFECTIVENESS.*—*A cease-and-de-*
22 *sist order or the suspension or conditioning of an*
23 *APIC's license by the Secretary under this paragraph*
24 *shall remain in effect in accordance with the terms of*
25 *the order, suspension, or conditioning until final ad-*

1 *judication in any action undertaken to challenge the*
2 *order, or the suspension or conditioning, or the rev-*
3 *ocation, of an APIC's license.*

4 **SEC. 311. EFFECTIVE DATE.**

5 *(a) IN GENERAL.—Except as provided in subsection*
6 *(b), this title shall take effect upon the expiration of the*
7 *6-month period beginning on the date of the enactment of*
8 *this Act.*

9 *(b) ISSUANCE OF REGULATIONS AND GUIDELINES.—*
10 *Any authority under this title of the Secretary, the Admin-*
11 *istrator, and the Secretary of the Treasury to issue regula-*
12 *tions, standards, guidelines, or licensing requirements, and*
13 *any authority of such officials to consult or enter into agree-*
14 *ments or memoranda of understanding regarding such*
15 *issuance, shall take effect on the date of the enactment of*
16 *this Act.*

17 **SEC. 312. SUNSET.**

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

21 *(1) the Secretary may not license any APIC; and*
22 *(2) no amount may be appropriated for the costs*
23 *(as such term is defined in section 502 of the Federal*
24 *Credit Reform Act of 1990 (2 U.S.C. 661c)) of any*

1 *guarantee under this title for any debenture issued by*
 2 *an APIC.*

3 *This section may not be construed to prohibit, limit, or af-*
 4 *fect the award, allocation, or use of any budget authority*
 5 *for the costs of such guarantees that is appropriated before*
 6 *the expiration of such period.*

7 **TITLE IV—NEW MARKETS**
 8 **CREDIT**

9 **SEC. 401. NEW MARKETS TAX CREDIT.**

10 (a) IN GENERAL.—Subpart D of part IV of sub-
 11 chapter A of chapter 1 of the Internal Revenue Code of
 12 1986 (relating to business-related credits) is amended by
 13 adding at the end the following new section:

14 **“SEC. 45D. NEW MARKETS TAX CREDIT.**

15 “**(a) ALLOWANCE OF CREDIT.—**

16 “(1) IN GENERAL.—For purposes of section 38,
 17 in the case of a taxpayer who holds a qualified eq-
 18 uity investment on a credit allowance date of such
 19 investment which occurs during the taxable year, the
 20 new markets tax credit determined under this sec-
 21 tion for such taxable year is an amount equal to 6
 22 percent of the amount paid to the qualified commu-
 23 nity development entity for such investment at its
 24 original issue.

1 “(2) CREDIT ALLOWANCE DATE.—The term
2 ‘credit allowance date’ means, with respect to any
3 qualified equity investment—

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

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

8 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
9 poses of this section—

10 “(1) IN GENERAL.—The term ‘qualified equity
11 investment’ means any equity investment in a quali-
12 fied community development entity if—

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

17 “(B) substantially all of such cash is used
18 by the qualified community development entity
19 to make qualified low-income community invest-
20 ments, and

21 “(C) such investment is designated for
22 purposes of this section by the qualified com-
23 munity development entity.

24 Such term shall not include any equity investment
25 issued by a qualified community development entity

1 more than 5 years after the date that such entity re-
2 ceives an allocation under subsection (f). Any alloca-
3 tion not used within such 5-year period may be re-
4 allocated by the Secretary under subsection (f).

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

11 “(3) SAFE HARBOR FOR DETERMINING USE OF
12 CASH.—The requirement of paragraph (1)(B) shall
13 be treated as met if at least 85 percent of the aggre-
14 gate gross assets of the qualified community devel-
15 opment entity are invested in qualified low-income
16 community investments.

17 “(4) TREATMENT OF SUBSEQUENT PUR-
18 CHASERS.—The term ‘qualified equity investment’
19 includes any equity investment which would (but for
20 paragraph (1)(A)) be a qualified equity investment
21 in the hands of the taxpayer if such investment was
22 a qualified equity investment in the hands of a prior
23 holder.

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

4 “(6) EQUITY INVESTMENT.—The term ‘equity
5 investment’ means—

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

8 “(B) any capital interest in a qualified
9 community development entity which is a part-
10 nership.

11 “(c) QUALIFIED COMMUNITY DEVELOPMENT ENTI-
12 TY.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified com-
14 munity development entity’ means any domestic cor-
15 poration or partnership if—

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

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

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

1 “(2) SPECIAL RULES FOR CERTAIN ORGANIZA-
2 TIONS.—The requirements of paragraph (1) shall be
3 treated as met by—

4 “(A) any specialized small business invest-
5 ment company (as defined in section
6 1044(c)(3)), and

7 “(B) any community development financial
8 institution (as defined in section 103 of the
9 Community Development Banking and Finan-
10 cial Institutions Act of 1994 (12 U.S.C. 4702)).

11 “(d) QUALIFIED LOW-INCOME COMMUNITY INVEST-
12 MENTS.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified low-in-
14 come community investment’ means—

15 “(A) any equity investment in, or loan to,
16 any qualified active low-income community busi-
17 ness,

18 “(B) the purchase from another commu-
19 nity development entity of any loan made by
20 such entity which is a qualified low-income com-
21 munity investment if the amount received by
22 such other entity from such purchase is used by
23 such other entity to make qualified low-income
24 community investments,

1 “(C) financial counseling and other serv-
2 ices specified in regulations prescribed by the
3 Secretary to businesses located in, and resi-
4 dents of, low-income communities, and

5 “(D) any equity investment in, or loan to,
6 any qualified community development entity if
7 substantially all of the investment or loan is
8 used by such entity to make qualified low-in-
9 come community investments described in sub-
10 paragraphs (A), (B), and (C).

11 “(2) QUALIFIED ACTIVE LOW-INCOME COMMU-
12 NITY BUSINESS.—

13 “(A) IN GENERAL.—For purposes of para-
14 graph (1), the term ‘qualified active low-income
15 community business’ means, with respect to any
16 taxable year, any corporation or partnership if
17 for such year—

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

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

1 “(iii) a substantial portion of the serv-
2 ices performed for such entity by its em-
3 ployees are performed in any low-income
4 community,

5 “(iv) less than 5 percent of the aver-
6 age of the aggregate unadjusted bases of
7 the property of such entity is attributable
8 to collectibles (as defined in section
9 408(m)(2)) other than collectibles that are
10 held primarily for sale to customers in the
11 ordinary course of such business, and

12 “(v) less than 5 percent of the aver-
13 age of the aggregate unadjusted bases of
14 the property of such entity is attributable
15 to nonqualified financial property (as de-
16 fined in section 1397B(e)).

17 “(B) PROPRIETORSHIP.—Such term shall
18 include any business carried on by an individual
19 as a proprietor if such business would meet the
20 requirements of subparagraph (A) were it incor-
21 porated.

22 “(C) PORTIONS OF BUSINESS MAY BE
23 QUALIFIED ACTIVE LOW-INCOME COMMUNITY
24 BUSINESS.—The term ‘qualified active low-in-
25 come community business’ includes any trades

1 or businesses which would qualify as a qualified
2 active low-income community business if such
3 trades or businesses were separately incor-
4 porated.

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

9 “(A) in lieu of applying paragraph (2)(B)
10 thereof, the rental to others of real property lo-
11 cated in any low-income community shall be
12 treated as a qualified business if there are sub-
13 stantial improvements located on such property,

14 “(B) paragraph (3) thereof shall not apply,
15 and

16 “(C) such term shall not include any busi-
17 ness if a significant portion of the equity inter-
18 ests in such business are held by any person
19 who holds a significant portion of the equity in-
20 vestments in the community development entity.

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

23 “(1) IN GENERAL.—The term ‘low-income com-
24 munity’ means any population census tract if—

1 “(A) the poverty rate for such tract is at
2 least 20 percent, or

3 “(B)(i) in the case of a tract not located
4 within a metropolitan area, the median family
5 income for such tract does not exceed 80 per-
6 cent of statewide median family income, or

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

12 “(2) AREAS NOT WITHIN CENSUS TRACTS.—In
13 the case of an area which is not tracted for popu-
14 lation census tracts, the equivalent county divisions
15 (as defined by the Bureau of the Census for pur-
16 poses of defining poverty areas) shall be used for
17 purposes of determining poverty rates and median
18 family income.

19 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
20 MENTS DESIGNATED.—

21 “(1) IN GENERAL.—There is a new markets tax
22 credit limitation of \$1,200,000,000 for each of cal-
23 endar years 2000 through 2004.

24 “(2) ALLOCATION OF LIMITATION.—The limita-
25 tion under paragraph (1) shall be allocated by the

1 Secretary among qualified community development
2 entities selected by the Secretary. In making alloca-
3 tions under the preceding sentence, the Secretary
4 shall give priority to entities with records of having
5 successfully provided capital or technical assistance
6 to disadvantaged businesses or communities.

7 “(3) CARRYOVER OF UNUSED LIMITATION.—If
8 the new markets tax credit limitation for any cal-
9 endar year exceeds the aggregate amount allocated
10 under paragraph (2) for such year, such limitation
11 for the succeeding calendar year shall be increased
12 by the amount of such excess.

13 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

14 “(1) IN GENERAL.—If, at any time during the
15 5-year period beginning on the date of the original
16 issue of a qualified equity investment in a qualified
17 community development entity, there is a recapture
18 event with respect to such investment, then the tax
19 imposed by this chapter for the taxable year in
20 which such event occurs shall be increased by the
21 credit recapture amount.

22 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
23 poses of paragraph (1), the credit recapture amount
24 is an amount equal to the sum of—

1 “(A) the aggregate decrease in the credits
2 allowed to the taxpayer under section 38 for all
3 prior taxable years which would have resulted if
4 no credit had been determined under this sec-
5 tion with respect to such investment, plus

6 “(B) interest at the overpayment rate es-
7 tablished under section 6621 on the amount de-
8 termined under subparagraph (A) for each
9 prior taxable year for the period beginning on
10 the due date for filing the return for the prior
11 taxable year involved.

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

14 “(3) RECAPTURE EVENT.—For purposes of
15 paragraph (1), there is a recapture event with re-
16 spect to an equity investment in a qualified commu-
17 nity development entity if—

18 “(A) such entity ceases to be a qualified
19 community development entity,

20 “(B) the proceeds of the investment cease
21 to be used as required of subsection (b)(1)(B),
22 or

23 “(C) such investment is redeemed by such
24 entity.

25 “(4) SPECIAL RULES.—

1 “(A) TAX BENEFIT RULE.—The tax for
2 the taxable year shall be increased under para-
3 graph (1) only with respect to credits allowed
4 by reason of this section which were used to re-
5 duce tax liability. In the case of credits not so
6 used to reduce tax liability, the carryforwards
7 and carrybacks under section 39 shall be appro-
8 priately adjusted.

9 “(B) NO CREDITS AGAINST TAX.—Any in-
10 crease in tax under this subsection shall not be
11 treated as a tax imposed by this chapter for
12 purposes of determining the amount of any
13 credit under this chapter or for purposes of sec-
14 tion 55.

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

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

22 “(1) which limit the credit for investments
23 which are directly or indirectly subsidized by other
24 Federal benefits (including the credit under section

1 42 and the exclusion from gross income under sec-
2 tion 103),

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

5 “(3) which impose appropriate reporting re-
6 quirements, and

7 “(4) which apply the provisions of this section
8 to newly formed entities.”.

9 (b) CREDIT MADE PART OF GENERAL BUSINESS
10 CREDIT.—

11 (1) IN GENERAL.—Subsection (b) of section 38
12 of such Code is amended by striking “plus” at the
13 end of paragraph (11), by striking the period at the
14 end of paragraph (12) and inserting “, plus”, and
15 by adding at the end the following new paragraph:

16 “(13) the new markets tax credit determined
17 under section 45D(a).”

18 (2) LIMITATION ON CARRYBACK.—Subsection
19 (d) of section 39 of such Code is amended by adding
20 at the end the following new paragraph:

21 “(9) NO CARRYBACK OF NEW MARKETS TAX
22 CREDIT BEFORE JANUARY 1, 2000.—No portion of
23 the unused business credit for any taxable year
24 which is attributable to the credit under section 45D

1 may be carried back to a taxable year ending before
2 January 1, 2000.”

3 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
4 (c) of section 196 of such Code is amended by striking
5 “and” at the end of paragraph (7), by striking the period
6 at the end of paragraph (8) and inserting “, and”, and
7 by adding at the end the following new paragraph:

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

10 (d) CLERICAL AMENDMENT.—The table of sections
11 for subpart D of part IV of subchapter A of chapter 1
12 of such Code is amended by adding at the end the fol-
13 lowing new item:

 “Sec. 45D. New markets tax credit.”

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to investments made after Decem-
16 ber 31, 1999.

Calendar No. 464

106TH CONGRESS
2D SESSION

H. R. 2848

[Report No. 106–706, Part I]

A BILL

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.

JUNE 28, 2000

Reported from the Committee on Banking and Financial
Services with an amendment

JUNE 28, 2000

Referral to the Committees on Ways and Means and
Small Business extended for a period ending not later
than July 28, 2000

JULY 28, 2000

The Committees on Ways and Means and Small Business
discharged; committed to the Committee of the Whole
House on the State of the Union and ordered to be
printed