H.R. 3631: Mr. TOWNS, Mr. BENTSEN, Mr. THOMPSON, Mr. COLEMAN, Mr. DEUTSCH, Mr. PORTER, Mr. DICKS, Mr. CLAY, Mr. HERGER, and Mr. QUILLEN.

H.R. 3652: Mr. SHAYS, Mr. DELLUMS, and Mr. STARK.

H.R. 3688: Mr. FAZIO of California.

H.R. 3714: Mr. MENENDEZ, Mr. MINGE, Mr. MCDERMOTT, Mr. LEWIS of Georgia, Mr. STUPAK, Mr. FAZIO of California, Mr. STUMP, Mr. OLVER, Mr. FILNER, Mr. GEJDENSON, Mr. LAFALCE, Mr. HOBSON, and Mr. WILLIAMS.

H.R. 3724: Mr. BAKER of Louisiana.

H.R. 3747: Mr. CLYBURN, Ms. NORTON, and Mr. FRAZER.

H.R. 3748: Ms. FURSE, Mr. FATTAH, Mr. BALDACCI, and Mr. ROMERO-BARCELO.

H.R. 3784: Mr. ZIMMER.

H.R. 3793: Mr. ACKERMAN.

H.R. 3839: Mr. LANTOS and Mr. DOYLE.

H.R. 3852: Mr. FAZIO of California, Mr. COBLE, Mr. CANADY, Mr. NETHERCUTT, and Mr. SOLOMON.

H.R. 3896: Mr. ACKERMAN.

H.R. 3908: Mr. HEINEMAN.

H.R. 3917: Mr. STARK, Mr. BEILENSON, Ms. LOFGREN, Mr. LEWIS of Georgia, Mrs. LOWEY, and Mr. SCHUMER.

H.R. 3920: Ms. FURSE, Mr. SANDERS, and Mr. DEFAZIO.

H.R. 3928: Mr. FARR.

H.R. 3942: Mr. ROEMER, Mr. RAHALL, Mr. NORWOOD, Mr. STUPAK, Mr. HAMILTON, and Mr. WISE.

H.R. 3963: Mr. BAKER of Louisiana, Mr. BEREUTER, and Mr. BENTSEN.

H.R. 4011: Mr. COLLINS of Georgia, Mr. MARTINI, Mr. BASS, Mr. BARRETT of Nebraska, Mr. GANSKE, Mr. KOLBE, and Ms. DUNN of Washington.

H.J. Res. 174: Mr. TATE.

H. Con. Res. 120: Mr. LANTOS and Mr. MANTON.

H. Con. Res. 199: Mr. BROWN of California, Ms. NORTON, Mrs. MINK of Hawaii, Mr. FILNER, Mr. ACKERMAN, Mr. HILLIARD and Mr. DAVIS.

H. Res. 413: Mr. HUTCHINSON.

H. Res. 515: Mr. HALL of Ohio, Mr. FRANKS OF NEW JERSEY, Mr. FROST, Mr. CUNNINGHAM, Mr. DAVIS, Mr. MANZULLO, and Mr. STEARNS.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3719

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 1: Page 7, line 24, strike ''3'' and insert ''7''.

Page 9, line 8, strike ''after August 1, 1996''.

Page 9, line 11, after ''lenders'' insert ''unless the Administrator determines that the lender, on a case by case basis, has undertaken other agreements which retain an acceptable exposure to loss by the lender in the event of default of a loan being securitized''.

H.R. 3719

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 2: Page 17, line 9, after ''percent'' insert ''but not to exceed 6 per centum per annum''.

H.R. 3719

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 3: Page 33, line 18, strike ''0.8125'' and insert ''0.9375''.

H.R. 3719

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 4: Page 37, strike lines 17 and 18 and insert the following:

''(3) have a minimum of 2 years experience, in liquidating''.

Page 38, line 5, after ''funds'' insert '', subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property''.

Page 38, line 8, after ''practices'' insert ''pursuant to a liquidation plan approved by the Administrator in advance of its implementation''.

H.R. 3719

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 5: Page 42, after line 8 insert the following:

SEC. 207. DEFINITIONS.

(a) SMALL BUSINESS CONCERN.—Section 103(5) (15 U.S.C. 662(5)) is amended by inserting before the semicolon the following: '', except that, for the purposes of this Act, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

''(A) shall not cause a business concern to be deemed not independently owned and operated;

''(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

''(C) shall be disregarded in determining whether a small business concern is a smaller enterprise''.

(b) PRIVATE CAPITAL.—Section 103(9) (15 U.S.C. 662(9)) is amended to read as follows:

''(9) the term 'private capital'—

''(A) means the sum of—

''(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

''(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee; provided that such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

''(B) does not include any—

''(i) funds borrowed by a licensee from any source;

''(ii) funds obtained through the issuance of leverage; or

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

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

''(II) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);''.

(c) NEW DEFINITIONS.—Section 103 (15 U.S.C. 662) is amended by striking paragraph (10) and inserting the following:

''(10) the term 'leverage' includes—

''(A) debentures purchased or guaranteed by the Administration;

''(B) participating securities purchased or guaranteed by the Administration; and

''(C) preferred securities outstanding as of October 1, 1996;

''(11) the term 'third party debt' means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

''(12) the term 'smaller enterprise' means any small business concern that, together with its affiliates—

''(A) has—

''(i) a net financial worth of not more than $6,000,000, as of the date on which assistance is provided under this Act to that business concern; and

''(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this Act to that business concern, of not more than $2,000,000, after Federal income taxes (excluding any carryover losses); or

''(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

''(13) the term 'qualified nonprivate funds' means any—

''(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term 'private capital';

''(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term 'private capital'; and

''(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

''(14) the terms 'employee welfare benefit plan' and 'pension plan' have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974, and are intended to include—

''(A) public and private pension or retirement plans subject to such Act; and

''(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

''(15) the term 'member' means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company; and

''(16) the term 'limited liability company' means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration.''.

SEC. 208. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES.

(a) LIMITED LIABILITY COMPANIES.—Section 301(a) (15 U.S.C. 681(a)) is amended in the first sentence, by striking ''body or'' and inserting ''body, a limited liability company, or''.

(b) ISSUANCE OF LICENSE.—Section 301(c) (15 U.S.C. 681(c)) is amended to read as follows:

''(c) ISSUANCE OF LICENSE.—

''(1) SUBMISSION OF APPLICATION.—Each new applicant for a license to operate as a small business investment company under this Act shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

''(2) PROCEDURES.—

''(A) STATUS.—Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

''(B) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

''(i) approve the application and issue a license for such operation to the applicant if

the requirements of this section are satisfied; or

''(ii) disapprove the application and notify the applicant in writing of the disapproval.

''(3) MATTERS CONSIDERED.—In reviewing and processing any application under this subsection, the Administrator—

''(A) shall determine whether—

''(i) the applicant meets the requirements of subsections (a) and (c) of section 302; and

''(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this Act;

''(B) shall take into consideration—

''(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

''(ii) the general business reputation of the owners and management of the applicant; and

''(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

''(C) shall not take into consideration any projected shortage or unavailability of leverage.

''(4) EXCEPTION.—

''(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

''(i) has private capital of not less than $3,000,000;

''(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 302(a); and

''(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 302(a).

''(B) LEVERAGE.—An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 302(a).''.

(c) REPORT ON SMALLER BUSINESS INVESTMENT COMPANIES.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall, after consultation with smaller small business investment companies, submit to the Committees on Small Business of House of Representatives and the Senate, a report on the feasibility of permitting smaller debt oriented small business investment companies to establish a separate corporate entity that would be authorized to participate in the loan program authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)). The report shall include information regarding eligibility, capitalization, and audit and regulatory oversight matters.

SEC. 209. CAPITAL REQUIREMENTS.

(a) INCREASED MINIMUM CAPITAL REQUIREMENTS.—Section 302(a) (15 U.S.C. 682(a)) is amended by striking ''(a)'' and all that follows through ''The Administration shall also determine the ability of the company,'' and inserting the following:

''(a) AMOUNT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

''(A) $2,500,000; or

''(B) $5,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this Act.

''(2) ADEQUACY.—In addition to the requirements of paragraph (1), the Administrator shall—

''(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

''(B) determine that the licensee will be able''.

(b) EXEMPTION FOR CERTAIN LICENSEES.—Section 302(a) (15 U.S.C. 682(a)) is amended by adding at the end the following new paragraph:

''(4) EXEMPTION FROM CAPITAL REQUIREMENTS.—Any company licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Programs Improvement Act of 1996 shall be exempt from the capital requirements in paragraph (1): *Provided,* That any such company shall be eligible to apply for leverage from the Administration only if—

''(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Investment Company Improvement Act of 1996 will be provided to smaller enterprises; and

''(B) the Administrator determines that—

''(i) the licensee has been profitable for three of the last four years, and for the average of all four years;

''(ii) the licensee is not committing a continuing violation of a major regulation of the Administration; and

''(iii) such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

And, *Provided further,* That any such company may apply for leverage to refinance a maturing debenture without regard to the profitability requirements in clause (i) above.''.

(c) DIVERSIFICATION OF OWNERSHIP.—Section 302(c) (15 U.S.C. 682(c)) is amended by adding the following new subsection:

''(d) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each licensee applying for a license after the date of enactment of the Small Business Investment Company Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.''.

SEC. 210. BORROWING.

(a) DEBENTURES.—Section 303(b) (15 U.S.C. 683(b)) is amended in the first sentence, by striking ''(but only'' and all that follows through ''terms)''.

(b) THIRD PARTY DEBT.—Section 303(b) (15 U.S.C. 683(b)) is amended by adding the following new subsections:

''(5) THIRD PARTY DEBT.—The Administrator—

''(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

''(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.''.

''(6) REQUIREMENT TO FINANCE SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises.''.

''(7) CAPITAL IMPAIRMENT.—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

''(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); and

''(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.''.

(e) EQUITY INVESTMENT REQUIREMENT.—Section 303(g)(4) (15 U.S.C. 683(g)(4)) is amended by striking ''and maintain''.

(f) FEES.—Section 303 (15 U.S.C. 683) is amended—

(1) in subsection (b), in the fifth sentence, by striking ''1 per centum,'' and all that follows before the period at the end of the sentence and inserting the following: ''1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration'';

(2) in subsection (g)(2), by striking ''1 per centum,'' and all that follows before the period at the end of the paragraph and inserting the following: ''1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration''; and

(3) by adding at the end the following new subsections:

''(i) LEVERAGE FEE.—With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee, payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee.

''(j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act, except that the Administration is authorized to continue to use for the payment of salaries such commitment fees as are being collected by the Administration on the effective date of the Small Business Investment Company Reform Act of 1996.''.

(g) REPEALER.—The amendments made by subsection 210(f) of the Small Business Programs Improvement Act of 1996 shall be effective as to leverage approved on or after October 1, 1996 and shall cease to be effective for financings approved on or after October 1, 1997.

SEC. 211. LIABILITY OF THE UNITED STATES.

Section 308(e) (15 U.S.C. 687(e)) is amended by striking ''Nothing'' and inserting ''Except as expressly provided otherwise in this Act, nothing''.

SEC. 212. EXAMINATIONS; VALUATIONS.

(a) EXAMINATIONS.—Section 310(b) (15 U.S.C. 687b(b)) is amended in the first sentence by inserting ''which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations,'' after ''Investment Division of the Administration,''.

(b) VALUATIONS.—Section 310(d) (15 U.S.C. 687b(d)) is amended to read as follows:

''(d) VALUATIONS.—

''(1) FREQUENCY OF VALUATIONS.—

''(A) IN GENERAL.—Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

''(B) MATERIAL ADVERSE CHANGES.—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

''(C) INDEPENDENT CERTIFICATION.—

''(i) IN GENERAL.—Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

''(ii) AUDIT REQUIREMENTS.—Each audit conducted under clause (i) shall include—

''(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

''(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

''(2) VALUATION CRITERIA.—Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

''(A) be established or approved by the Administrator; and

''(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.''.

SEC. 213. TRUSTEE OR RECEIVERSHIP OVER LICENSEES.

(a) FINDING.—It is the finding of the Congress that increased recoveries on assets in liquidation under the Small Business Investment Act of 1958 are in the best interests of the Federal Government.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''Administrator'' means the Administrator of the Small Business Administration;

(2) the term ''Administration'' means the Small Business Administration; and

(3) the term ''licensee'' has the same meaning as in section 103 of the Small Business Investment Act of 1958.

(c) LIQUIDATION PLAN.—

(1) IN GENERAL.—Not later than 90 days after date of enactment of this Act, the Administrator shall submit to the Committees on Small Business of the Senate and the House of Representatives a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation, including assets of licensees in receivership or in trust held by or under the control of the Administration or its agents.

(2) CONTENTS.—The plan submitted under paragraph (1) shall include a timetable for liquidating the liquidation portfolio of small business investment company assets owned by the Administration, and shall contain the Administrator's findings and recommendations on various options providing for the fair and expeditious liquidation of such assets within a reasonable period of time, giving due consideration to the option of entering into one or more contracts with private sector entities having the capability to carry out the orderly liquidation of similar assets.

(3) REPORT.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on the activities and expenditures of the receiver's agents employed by or under contract with the Investment Division of the Small Business Administration. The report shall detail the qualifications and experience of the receiver's agents, their billing practices and procedures, expenses, costs, overhead, and use of outside contractors or attorneys.

SEC. 214. TECHNICAL AND CONFORMING AMENDMENTS.

The Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) is amended in subsection (a) of section 303 by striking ''debenture bonds'' and inserting ''securities,'' and by striking subsection (f) and redesignating subsequent subsections accordingly.

H.R. 3719

OFFERED BY: MRS. MEYERS OF KANSAS

AMENDMENT NO. 6: Title II, Section 202 is amended as follows:

On page 33, line 15, Strike ''0.8125'' and insert ''0.9375''.

Title I, Section 103 is amended as follows:

On page 7, line 24, by striking ''3 business days'', and inserting ''5 business days''.

Title I, Section 103 is amended as follows:

On page 9, strike lines 1 through 11, and insert the following:

''is amended by adding at the end the following: ''The Administration may not prohibit a lender from securitizing the non-guaranteed portion of any loan made under section 7(a) solely due to the status of the lender as a depository or non-depository institution. In order to reduce the risk of loss to the government in the event of default, the Administration may require any lender securitizing the non-guaranteed portion of any loan to retain exposure of up to ten percent of the amount of the loan.''.

Title I, Section 104 is amended as follows:

On page 16, by striking line 23, and inserting the following:

''shall be—(a) in the case of a homeowner, or business, or''

On page 17, line 9, by striking the period, inserting a semicolon, and adding the following:

''(b) in the case of a homeowner, or business or other concern, including agricultural cooperatives able to obtain credit elsewhere, at the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed one percent per annum as determined by the Administrator, and adjusted to the nearest ⅛ of one percent.''.

H.R. 3719

OFFERED BY: MR. TALENT

AMENDMENT NO. 7: Page 9, line 4, before the period insert ''solely on the status of the lender as a depository institution'';

Page 9, line 5, strike ''shall require all'' and insert ''may require'';

Page 9, line 8, strike ''August 1'' and insert ''October 1''; and

Page 9, line 9, strike '', which percentage shall be applicable uniformly to both depository institutions and other lenders''.