DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Monday, October 18, 1999

MEMORANDUM FOR SECRETARY SUMMERS
DEPUTY SECRETARY EIZENSTAT

FROM: LINDA ROBERTSON MT for LLR
ASSISTANT SECRETARY (LEGISLATIVE AFFAIRS)

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SUBJECT: MINIMUM WAGE LEGISLATION – TAX PROVISIONS

Overview

You have asked us to provide a brief overview and analysis of the minimum wage legislation currently pending in the House of Representatives. Representative Lazio (R-NY) has introduced legislation (H.R. 3081) providing for a $1.00 increase in the minimum wage, phased in over three years. The legislation also includes a panoply of tax provisions, most of which are taken from the tax legislation vetoed by the President. The legislation does not include any significant offsets.

The most egregious of these provisions are the phased-in reduction of the estate tax and those provisions from the Portman-Cardin/Graham-Grassley pension legislation that raise the limits in tax-qualified retirement plans and weaken pension anti-discrimination protections for moderate- and lower-income workers.

The Treasury Department is preparing a revenue estimate of the legislation. Early reports are that it will score as a loss in receipts in excess of $30 billion over the next five years.

The bill is on the calendar for consideration by the House this week, although it was referred primarily to the Ways and Means Committee and to the Education and the Workforce Committee, "for a period to be subsequently determined by the Speaker." Ways and Means Chairman Archer is thought to be unhappy because the bill contains a few significant "new starters" – items that were not included in the vetoed tax legislation – and because he surmises the legislation may bypass his committee entirely and be taken up by the Rules Committee and then to the House floor. We believe it is unlikely that the minimum wage legislation will be considered in the House this week.

Mr. Bonior is preparing an alternative minimum wage package that would increase the minimum wage by $1.00 over two years, and would also include a package – probably not identical to the Lazio package – of small business tax items. The Bonior tax package is expected to be fully offset. We do not have details of Mr. Bonior's tax package, but understand that there may be certain provisions that we do not like.

Recommendation

From a tax policy standpoint, the Lazio bill has several serious defects. First, the tax package is large and unfunded. Second, the estate tax relief is very costly and would benefit only the wealthiest American families. Finally, we object to the pension provisions that raise the limits in tax-qualified retirement plans and weaken pension anti-discrimination protections for moderate- and lower-income workers, because they are regressive and will not lead to significant increases in plan coverage.

Tax provisions

The preponderance of the bill's tax provisions are taken from the Financial Freedom Act of 1999, vetoed by the President. In some cases those provisions have been tweaked, apparently to reduce their cost in at least several cases. A few new starters have been added, to the apparent consternation of Mr. Archer, including repeal of the occupational taxes relating to distilled spirits, wine, and beer; an exclusion for employer-provided educational benefits to children of employees; and a production wage credit for independent film and television producers.

Estate tax provisions

The bill includes a phase-down in the estate tax rates through 2004; a conversion of the unified credit to an exemption, and other provisions of the vetoed bill involving the generation-skipping transfer tax. The conversion of the unified credit to an exemption is a tax decrease in disguise for the wealthiest taxpayers. The effect of the conversion is to take the exempt amount from the highest rate brackets rather than the lowest rate brackets. Thus, structured as an exemption, the wealthiest taxpayers get the greatest benefit.

Watts-Talent provisions

The bill includes the Watts-Talent renewal community provisions that were in the vetoed tax bill. We have concerns regarding several aspects of these provisions, particularly the 100-percent capital gains exclusion and the provisions relating to family development accounts. We also are concerned that the provisions are not well integrated with the current law empowerment zone provisions, which may cause needless complexity and duplication.

Pension reform

The bill includes provisions of the Portman-Cardin/Graham-Grassley pension "reforms" that were a part of the vetoed bill. We object to the pension provisions that raise the limits in tax-qualified retirement plans and weaken pension anti-discrimination protections for moderate- and lower-income workers, because they are regressive and will not lead to significant increases in plan coverage.

Small business provisions

These provisions include a phased-in increase in the deductibility, from 50 percent to 60 percent, of business meals for small businesses., acceleration of 100-percent deductibility of self-employed health insurance, and an increase in small business expensing.

WOTC, welfare-to-work extensions

These expired provisions would be extended through 2001 under the bill. None of the other expired or expiring provisions are included in this legislation. The Ways and Means Committee approved extensions of these provisions through 2001 also; the Senate Finance Committee mark likely will begin with an extension through 2000 only.

Low-income housing tax credit

The bill includes an increase in the low-income housing per-capita cap to $1.75 in 2004. The Administration FY 2000 budget provided for an immediate increase to $1.75, beginning in 2000.

Private activity bond cap

The bill includes an acceleration in the existing scheduled increase in the private activity bond volume cap

Timber provision

The bill includes a temporary suspension of the maximum amount of amortizable reforestation expenses.

REIT package

The minimum wage bill includes the bulk of the provisions with respect to REITs that were in the vetoed bill, including provisions on taxable REIT subsidiaries and health care REITs. We have concerns regarding this provisions.

FY 2000 FUNDING ISSUES
COMMERCE/JUSTICE/STATE

Agency/Program	FY 1999 Enacted BA	FY 2000 Proposed BA	Latest House Action BA	Latest Senate Action BA	Conf. Action BA	Alt. Conf. Action BA	Delta to Conf Action BA	Alt. Conf. Less Enacted BA	Alt. Conf. Less Proposed BA
Drug Testing & Intervention Program	103	215	103	103		103	103	—	-112
Civil Rights Division/Enforcement Partnerships	69	82	74	71		74	74	5	-8
Civil Division	143	169	149	143		146	146	3	-43
Tobacco Litigation (included above)	0	20	0	0		20	20	20	—
Indian Country Law Enforcement	89	124	0	111		110	110	21	-14
State:									
Security and Maintenance of U.S. Missions	1,081	748	717	583		717	717	-364	-31
Advance Appropriation	0	3,600	0	0			0	—	-3,600
Contributions to International Organizations	922	953	843	838		900	900	-22	-53
Contributions to International Peacekeeping	231	485	200	144		485	485	254	—
UN Arrears	475	446	351	351		351	351	-124	-95
State Department Operations	3,295	2,928	2,807	2,721		2,880	2,880	-415	-48
SBA:									
Small Business Loan Program Funding	125	148	129	168		163	163	38	15
7(a) (included above)	108	118	106	118		113	113	5	-5
Microloans (included above)	2	4	1	4		3	3	1	-1
SBIC (included above)	17	26	22	26		24	24	7	-2
New Markets Initiative	0	85	0	0		33	33	33	-52
BusLink (included above)	0	3	0	0		3	3	3	—
NMVC (included above)	0	15	0	0		10	10	10	-5
NMTA (included above)	0	30	0	0		20	20	20	-10
Disaster Loan Program	248	207	201	78		262	262	14	55
New Budget Authority (included above)	76	39	139	78		39	39	-37	—
Contingent Emergency Funding (included above)	71	158	0	0		141	141	70	-17
[illegible]/Recoveries (included above)	101	10	62	0		62	62	-19	72
Administrative Expenses	131	116	111	33		[illegible]	[illegible]	35	-2
SBE (included above)	91	131	94	129		129	129	35	25
Business Loan Admin. (included above)	151	161	116	56		186	186		
Disaster Loan Admin. (included above)									

HR 2764 IH

106th CONGRESS

1st Session

H. R. 2764

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

August 5, 1999

Mr. LAFALCE (for himself, Mr. KANJORSKI, Mr. VENTO, Ms. WATERS, Mr. WATT of North Carolina, Ms. HOOLEY of Oregon, Mr. GUTIERREZ, Ms. CARSON, Mr. SANDLIN, Mr. MEEKS of New York, Mr. MASCARA, Mr. GONZALEZ, Mr. BRADY of Pennsylvania, Mr. JEFFERSON, Mr. KLINK, Mr. OWENS, Mr. ANDREWS, Mr. FROST, Mrs. MINK of Hawaii, Ms. SLAUGHTER, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Banking and Financial Services

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A BILL

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

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

SECTION. 101. SHORT TITLE.

This Act may be cited as the `America's Private Investment Companies Act'.

SEC. 102. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) CONGRESSIONAL FINDINGS-

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

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

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

(b) PURPOSES- The purposes of this Act are to--

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

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

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

SEC. 103. DEFINITIONS.

As used in this Act:

(1) The term `Administrator' means the Administrator of the Small Business Administration.

(2) The term `Agency' has the meaning given such term in section 551(1) of title 5, United States Code.

(3) The term `APIC' means a business entity that has been licensed under the terms of this Act as an America's Private Investment Company, and the license of which has not been revoked.

(4) The term `community development entity' means an entity whose primary mission must be serving or providing investment capital for low-income communities or low-income persons and which maintains accountability to residents of low-income communities.

(5) The term `cost' has the meaning set forth in section 502(5) of the Federal Credit Reform Act of 1990.

(6) The term `debentures' means debt instruments the terms of any of which may be specified by the Secretary.

(7) The term `HUD' means the Secretary of Housing and Urban Development or the Department of Housing and Urban Development, as the context requires.

(8) The term `low-income communities' means census tracts with (A) poverty rates of at least 20 percent, based on the most recent census data; or (B) median family income that does not exceed 80 percent of the greater of (i) metropolitan area median family income, or (ii) statewide median family income.

(9) The term `qualified active business' means a business or trade--

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

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

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

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

(10) The term `qualified low-income community investments' means equity investments in, or loans to, qualified active businesses located in low-income communities.

(11) The term `Secretary' means the Secretary of Housing and Urban Development, unless

otherwise specified in this Act.

SEC. 104. AUTHORIZATION.

(a) LICENSES- The Secretary is authorized to license America's Private Investment Companies, in accordance with the terms of this Act.

(b) REGULATIONS- The Secretary is authorized to regulate APICs for compliance with sound financial management practices, and the program and procedural goals of this and other related Acts, and other purposes as required or authorized by this Act, or determined by the Secretary. The Secretary may issue regulations, Federal Register notices, and other guidance or directives to carry

out licensing and regulatory and other duties under this Act.

(c) USE OF CREDIT SUBSIDY FOR LICENSES-

(1) NUMBER OF LICENSES- The Secretary is authorized to have outstanding at any one time the number of licenses for APICs that may be supported by the amount of the budget authority appropriated in accordance with the Federal Credit Reform Act of 1990 for the subsidy cost and the investment strategies of such APICs.

(2) USE OF CREDIT SUBSIDY AFTER INITIAL APPROPRIATION TO HUD- With respect to any appropriation of budget authority for the credit costs after the initial appropriation, the Secretary may license additional APICs, or as hereinafter provided, increase the credit subsidy allocated to an APIC as an award for high performance under this Act.

(d) COOPERATION AND COORDINATION-

(1) PROGRAM POLICIES- The Secretary is authorized to coordinate and cooperate, through memoranda of understanding, an APIC liaison committee, or otherwise, with the Administrator, the Secretary of the Treasury, and other agencies in the discretion of the Secretary, on implementation of this Act, including regulation, examination, and monitoring of APICs under this Act.

(2) OPERATIONS- The Secretary may carry out this Act--

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

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

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

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

(g) FUNDING-

(1) AUTHORIZATION FOR APPROPRIATION OF COST OF ANNUAL LOAN GUARANTEE COMMITMENT- For each of fiscal years 2000, 2001, 2002, 2003, and 2004, there is authorized to be appropriated up to $36,000,000 for the cost of annual loan guarantee commitments under this Act. The Secretary may make commitments to guarantee

loans only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $1,000,000,000, or the amount specified in appropriations Acts in each such fiscal year. Amounts appropriated under this paragraph shall remain available for 5 years.

(2) AUTHORIZATION FOR APPROPRIATION OF ADMINISTRATIVE EXPENSES- For each of the fiscal years 2000, 2001, 2002, 2003, and 2004, there is authorized to be appropriated $1,000,000 for administrative expenses for carrying out this Act. The Secretary may transfer amounts appropriated under this paragraph to any appropriation account of HUD or another agency, to carry out the program under this Act. Any agency to which the Secretary may transfer amounts under this Act is authorized to accept such transferred amounts in any appropriation account of such agency.

SEC. 105. SELECTION OF APICS.

(a) NOTICE OF COMPETITIONS- The Secretary shall select APICs for licensing on the basis of competitions. Such competitions shall be announced by a Federal Register notice that invites applications for APIC licenses. Each such notice shall set forth application requirements, and such other terms of the competition not otherwise provided for, as determined by the Secretary.

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

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

(2) The entity must, as of the time that the license is approved, have reasonably available to it, as determined by the Secretary, a minimum of $25,000,000 in equity capital, as determined by the Secretary.

(3) The entity must demonstrate that its managers are qualified, and have the knowledge, experience, and capability necessary to raise large amounts of capital and make investments for community economic development in distressed areas.

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

(5) The entity must prepare and submit an investment strategy that includes benchmarks for evaluation of its progress.

(6) The entity must prepare and submit a statement of public purpose goals. The statement shall include elements specified by the Secretary, including proposed measurements and strategies for meeting the goals. The goals shall promote community and economic development, and include at least--

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

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

(C) involvement of community-based organizations and residents in community development activities.

(7) The entity must demonstrate a capacity to cooperate with States or units of general local government and with community-based organizations and residents of low-income

communities.

(8) The entity must agree to comply with applicable laws, including Federal executive orders, Office of Management and Budget circulars, and Treasury requirements, and such operating and regulatory requirements as the Secretary may impose from time to time.

(9) The entity must satisfy other application requirements that the Secretary may impose by regulation or Federal Register notice.

(c) COMMUNICATIONS BETWEEN HUD AND APPLICANTS DURING SELECTION PROCESS-

(1) The Secretary shall set forth in regulations the procedures under which HUD, on the one hand, and applicants for APIC licenses, and others, on the other hand, may communicate. Such regulations shall--

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

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

(C) restrict such officers and employees from revealing to any applicant--

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

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

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

(2) 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. 106. 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;

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

(C) as the Secretary may prescribe by regulation.

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

(b) INVESTMENT LIMITATIONS-

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

(A) amounts available from the proceeds of the issuance of an APICs debenture guaranteed under this Act;

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

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

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

(A) the APIC's equity capital; plus

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

(c) BORROWING POWERS; DEBENTURES-

(1) ISSUING- An APIC may issue debentures that the Secretary may guarantee under the terms of this Act.

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

(A) the total amount of debentures that an APIC issues under this Act that an APIC may have outstanding at any one time shall not exceed an amount equal to 200 percent of the equity capital of the APIC, as determined by the Secretary: *Provided,* That the Secretary may by regulation increase the foregoing percentage to up to 300 percent for all APICs, or any reasonable class of APICs; and

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

(3) REPAYMENT-

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

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

(C) Until an APIC has repaid all interest and principal amounts on APIC borrowings under this subsection, an APIC may use the proceeds of investments in accordance with regulations issued by the Secretary only to--

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

(ii) pay for the reasonable administrative expenses of the APIC;

(iii) purchase Treasury securities;

(iv) repay interest and principal amounts on APIC borrowings under this subsection;

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

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

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

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

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

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

SEC. 107. CREDIT ENHANCEMENT BY THE FEDERAL GOVERNMENT.

(a) ISSUANCE AND GUARANTEE OF DEBENTURES- Consistent with the Federal Credit Reform Act of 1990, the Secretary is authorized to make commitments to guarantee and guarantee the timely payment of all principal and interest as scheduled on, debentures issued by APICs. Such commitments or guarantees may be made by the Secretary on such terms and conditions, including but not limited to amounts, expirations, number, priorities of repayment, security, collateral, amortization, payment of interest (including the timing thereof), and fees and charges, as the Secretary determines to be appropriate, in documents that the Secretary approves for any commitment or guarantee, or pursuant to regulations issued by the Secretary. Debentures guaranteed by the Secretary under this subsection shall be senior to any debt obligation, equity contribution or earnings, or the distribution of dividends, interest, or other amounts of an APIC, notwithstanding any Federal or other law. Debentures may be issued for a term of not to exceed 21 years and shall bear interest during all or any part of that time period at a rate or rates approved by the Secretary. The debentures shall also contain such other terms as the Secretary may fix.

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

(c) GUARANTEE OF TRUST CERTIFICATES-

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

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

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

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

(e) SUBROGATION AND LIENS-

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

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

(f) REGISTRATION-

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

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

such amounts as the Secretary determines to be necessary to protect the interests of the Government.

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

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

SEC. 108. APIC REQUESTS FOR GUARANTEE ACTIONS.

(a) ALL APIC REQUESTS FOR HUD GUARANTEE ACTION- An APIC may request that the Secretary guarantee a debenture that the APIC intends to issue, in accordance with the Secretary's regulations. All such requests shall include a description of the manner in which the APIC intends to use the proceeds from such debenture. All such requests shall also include certification by the APIC that the APIC is in substantial compliance with--

(1) this Act and other applicable laws;

(2) all terms and conditions of its license, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding;

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

(4) any other requirements that the Secretary may specify under regulations.

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

(c) RESPONSIBILITY FOR ENVIRONMENTAL REVIEWS-

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

(2) ASSUMPTION OF RESPONSIBILITY BY COGNIZANT UNIT OF GENERAL GOVERNMENT-

(A) GUARANTEE OF DEBENTURES- In order to assure that the policies of the

National Environmental Policy Act of 1969 and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this Act, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the guarantee of debentures, any part of the proceeds of which are to fund particular qualified low-income community investments of APICs under this Act, if a State or unit of general local government, as designated by the Secretary in accordance with regulations issued by the Secretary, assumes all of the responsibilities for environmental review,

decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 and such other provisions of law that further such Act as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake the funding of such investments as a Federal action.

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

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

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

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

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

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

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

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

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

responsibilities relate to the guarantees of debentures, any parts of the proceeds of which are to fund such investments, which are covered by such certification.

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

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

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

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

(D) specify that the certifying officer--

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and

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

SEC. 109. EXAMINATION AND MONITORING OF APICS.

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

(b) MONITORING, UPDATING, AND PROGRAM REVIEW-

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

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

(3) EXAMINATION STANDARDS-

(A) SOUND FINANCIAL MANAGEMENT PRACTICES- The Secretary shall examine each APIC to ensure, as a matter of sound financial management practices, substantial compliance with this and other applicable laws, including Federal executive orders, Department of Treasury and Office of Management and Budget guidance, circulars, and application and licensing requirements on a continuing basis. The Secretary may set any additional sound financial management practices standards by regulation, including standards that address solvency and financial exposure.

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

SEC. 110. INCENTIVES AND PENALTIES.

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

(b) PENALTIES-

(1) IN GENERAL- The Secretary may penalize any APIC, or any manager of an APIC, in the event such APIC or a manager of the APIC commits an act of fraud, mismanagement, or noncompliance with this Act or regulations thereunder or a condition of the APIC's license under this Act. The Secretary in regulations shall identify, by generic description of a role or responsibilities, any manager of an APIC that is subject to this subsection.

(2) PENALTIES REQUIRING NOTICE AND HEARING- With respect to an act of commission or omission under paragraph (1) for which the Secretary may penalize an APIC or a manager, the Secretary may, following notice in writing to the APIC or the manager, and opportunity for administrative hearing--

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

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

(C) revoke the APIC's license.

(3) PENALTIES REQUIRING NOTICE AND AN OPPORTUNITY TO RESPOND- With respect to any act of commission or omission under paragraph (1) for which the Secretary may penalize an APIC or a manager, following notice in writing and an opportunity for the APIC or manager to respond, impose any reasonable penalty. Such a penalty may, in addition to any others, be--

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

(B) the suspension of an APIC's license, or the conditioning of the use of an APIC's license, for up to 90 days, including the deferral for the period of the suspension of a commitment to guarantee any new debenture of the APIC; or

(C) any other penalty that the Secretary determines to be less burdensome to the APIC than a penalty that requires notice and an administrative hearing under this Act.

(c) PROCEDURES-

(1) No award under this section shall be made until notice thereof is published in the Federal Register.

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

(3)(A) The Secretary may suspend or condition an APIC's license for up to 45 days without prior notice in the Federal Register, but such suspension or conditioning shall take effect only after the Secretary has issued a written notice (including a writing in electronic form) of such action to the APIC. Such written notice shall be effective without regard to whether the APIC has been accorded the opportunity to respond. Such suspension or conditioning shall be subject to enforcement by an order of a court when the Secretary has issued such written notice.

(B) After such suspension or conditioning takes effect, the Secretary shall promptly cause a notice of suspension or conditioning of such license for a period of up to 90 days to be published in the Federal Register. The APIC shall be entitled to respond to such notice. In counting the time period of the suspension or conditioning, the first day shall be the day that written notice under this paragraph is issued.

(C) During the time period of such suspension or conditioning, the Secretary may proceed under subsection (b)(2), and in accordance with the procedures applicable to such subsection, to revoke the APIC's license. Only if the Secretary so proceeds, notwithstanding any other provision of this section, the Secretary may extend the suspension or conditioning of the APIC's license by publishing a notice of such action in the Federal Register--

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

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

(D) The suspension or conditioning of an APIC's license by the Secretary under this paragraph shall remain in effect in accordance with its terms until final adjudication in any litigation undertaken to challenge such suspension or conditioning, or revocation, of an APIC's license.

END

HR 2713 IH

106th CONGRESS

1st Session

H. R. 2713

To amend the Internal Revenue Code of 1986 to provide a credit against income tax for certain investments in businesses located in low-income communities.

IN THE HOUSE OF REPRESENTATIVES

August 5, 1999

Mr. RANGEL (for himself, Mr. MATSUI, Mr. LEVIN, Mr. MCDERMOTT, Mr. LEWIS of Georgia, Mr. JEFFERSON, Mr. BECERRA, Mrs. THURMAN, Mr. ABERCROMBIE, Mr. ALLEN, Mr. FARR of California, Mr. FROST, Mr. GUTIERREZ, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KANJORSKI, Ms. MCKINNEY, Mr. MARTINEZ, Mr. PASTOR, Ms. PELOSI, Mr. TRAFICANT, Mr. UDALL of New Mexico, Ms. WATERS, and Mr. WEINER) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against income tax for certain investments in businesses located in low-income communities.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `New Markets Tax Credit Act of 1999'.

SEC. 2. NEW MARKETS TAX CREDIT.

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

`SEC. 45D. NEW MARKETS TAX CREDIT.

`(a) ALLOWANCE OF CREDIT-

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

`(2) CREDIT ALLOWANCE DATE- The term `credit allowance date' means, with respect to any qualified equity investment--

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

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

`(b) QUALIFIED EQUITY INVESTMENT- For purposes of this section--

`(1) IN GENERAL- The term `qualified equity investment' means any equity investment in a qualified community development entity if--

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

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

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

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

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

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

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

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

`(6) EQUITY INVESTMENT- The term `equity investment' means--

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

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

`(c) QUALIFIED COMMUNITY DEVELOPMENT ENTITY- For purposes of this section--

`(1) IN GENERAL- The term `qualified community development entity' means any domestic corporation or partnership if--

`(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons, `(B) the entity maintains accountability to residents of low-income communities through representation on governing or advisory boards or otherwise, and

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

`(2) SPECIAL RULES FOR CERTAIN ORGANIZATIONS- The requirements of paragraph (1) shall be treated as met by--

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

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

`(d) QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS- For purposes of this section--

`(1) IN GENERAL- The term `qualified low-income community investment' means--

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

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

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

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

`(2) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS-

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

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

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

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

`(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and `(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397B(e)).

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

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

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

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

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

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

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

`(1) IN GENERAL- The term `low-income community' means any population census tract if--

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

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

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

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

`(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED-

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

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

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

`(g) RECAPTURE OF CREDIT IN CERTAIN CASES-

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

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

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

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

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

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

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

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

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

`(4) SPECIAL RULES-

`(A) TAX BENEFIT RULE- The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

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

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

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

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

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

`(3) which impose appropriate reporting requirements, and

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

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT-

(1) IN GENERAL- Subsection (b) of section 38 of such Code is amended by striking `plus' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting `, plus', and by adding at the end the following new paragraph:

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

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

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

(c) DEDUCTION FOR UNUSED CREDIT- Subsection (c) of section 196 of such Code is amended by striking `and' at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting `, and', and by adding at the end the following new paragraph:

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

(d) CLERICAL AMENDMENT- The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

`Sec. 45D. New markets tax credit.'

(e) EFFECTIVE DATE- The amendments made by this section shall apply to investments made after December 31, 1999.

END

S 1526 IS

106th CONGRESS

1st Session

S. 1526

To amend the Internal Revenue Code of 1986 to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities.

IN THE SENATE OF THE UNITED STATES

August 5, 1999

Mr. ROCKEFELLER (for himself, Mr. ROBB, Mr. SARBANES, Mr. KERRY, Mr. KENNEDY, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities.

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

SECTION 1. NEW MARKETS TAX CREDIT.

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

`SEC. 45D. NEW MARKETS TAX CREDIT.

`(a) ALLOWANCE OF CREDIT-

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

`(2) CREDIT ALLOWANCE DATE- The term `credit allowance date' means, with respect to any qualified equity investment--

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

`(B) each of the 6 anniversary dates of such date thereafter.

`(b) QUALIFIED EQUITY INVESTMENT- For purposes of this section--

`(1) IN GENERAL- The term `qualified equity investment' means any equity investment in a qualified community development entity if--

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

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

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

Such term shall not include any equity investment issued by a qualified community development entity more than 7 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 7-year period may be reallocated by the Secretary under subsection (f).

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

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

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

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

`(6) EQUITY INVESTMENT- The term `equity investment' means--

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

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

`(c) QUALIFIED COMMUNITY DEVELOPMENT ENTITY- For purposes of this section--

`(1) IN GENERAL- The term `qualified community development entity' means any domestic corporation or partnership if--

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

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

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

`(2) SPECIAL RULES FOR CERTAIN ORGANIZATIONS- The requirements of paragraph (1) shall be treated as met by--

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

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

`(d) QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS- For purposes of this section--

`(1) IN GENERAL- The term `qualified low-income community investment' means--

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

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

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

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

`(2) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS-

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

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

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

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

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

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

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

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

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

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

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

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

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

`(1) IN GENERAL- The term `low-income community' means any population census tract if--

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

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

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

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

`(3) TARGETED POPULATION- The Secretary may prescribe regulations under which 1 or more targeted populations (within the meaning of section 3(20) of the Riegle Community Development and Regulatory Improvement Act of 1974 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for identifying the area covered by any such community for purposes of determining entities which are qualified active low-income community businesses with respect to such community.

`(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED-

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

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

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

`(g) RECAPTURE OF CREDIT IN CERTAIN CASES-

`(1) IN GENERAL- If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

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

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

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

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

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

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

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

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

`(4) SPECIAL RULES-

`(A) TAX BENEFIT RULE- The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

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

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

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

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

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

`(3) which impose appropriate reporting requirements, and

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

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT-

(1) IN GENERAL- Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking `plus' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting `, plus', and by adding at the end the following new paragraph:

`(14) the new markets tax credit determined under section 45D(a).'

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

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

(c) DEDUCTION FOR UNUSED CREDIT- Subsection (c) of section 196 of the Internal Revenue Code of 1986 is amended by striking `and' at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting `, and', and by adding at the end the following new paragraph:

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

(d) CLERICAL AMENDMENT- The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

`Sec. 45D. New markets tax credit.'

(e) EFFECTIVE DATE- The amendments made by this section shall apply to investments made after December 31, 1999.

END

S 1565 IS

106th CONGRESS

1st Session

S. 1565

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 5, 1999

Mr. SARBANES (for himself, Mr. EDWARDS, Mr. BAYH, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `America's Private Investment Companies Act'.

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) CONGRESSIONAL FINDINGS- Congress makes the following findings:

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

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

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

(b) PURPOSE- The purposes of this Act are to:

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

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

(3) provide a vehicle under which the economic and social returns on financial investments made pursuant to this Act may be available both to the investors in these entities and to the

residents of the low-income communities.

SEC. 3. DEFINITIONS.

As used in this Act, certain terms have the respective meanings set forth herein:

(1) `Agency' is an entity as defined in section 551(1) of title 5, United States Code.

(2) `APIC' means an America's Private Investment Company, a business entity that has been licensed under the terms of this Act, and the license of which has not been revoked.

(3) `Administrator' means the Administrator of the Small Business Administration.

(4) `Community development entities' are entities whose primary mission must be serving or providing investment capital for

low-income communities or low-income persons, maintain accountability to residents of low-income communities, and have 60 percent of their aggregate gross assets invested in low-income community investments or residential property located in low-income communities.

(5) `Cost' has the meaning set forth in section 502(5) of the Federal Credit Reform Act of 1990.

(6) `Debentures' means debt instruments the terms of any of which may be specified by the Secretary.

(7) `HUD' means the Secretary of Housing and Urban Development or the Department of Housing and Urban Development, as the context requires.

(8) `Low-income communities' are census tracts with either (1) poverty rates of at least 20 percent, based on the most recent census data; or (2) median family income that does not exceed 80 percent of the greater of (A) metropolitan area median family income or (B) statewide median family income.

(9) `Qualified low-income community investments' means equity investments in, or loans to, qualified active businesses located in low-income communities.

(10) `Qualified active business' means a business or trade--

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

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

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

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

(11) `Secretary' means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

SEC. 4. AUTHORIZATION.

(a) LICENSES- The Secretary is authorized to license America's Private Investment Companies, in accordance with the terms of this Act.

(b) REGULATIONS- The Secretary is authorized to regulate APICs for compliance with sound financial management practices, and the program and procedural goals of this and other related Acts, and other purposes as required or authorized by this Act, or determined by the Secretary. The Secretary may issue regulations, Federal Register notices, and other guidance or directives to carry out licensing and regulatory and other duties under this Act.

(c) USE OF CREDIT SUBSIDY FOR LICENSES-

(1) NUMBER OF LICENSES- The Secretary is authorized to have outstanding at any one time the number of licenses for APICs that may be supported by the amount of the budget authority appropriated in accordance with the Federal Credit Reform Act of 1990 for the subsidy cost and the investment strategies of such APICs.

(2) USE OF CREDIT SUBSIDY AFTER INITIAL APPROPRIATION TO HUD- With respect to any appropriation of budget authority for the credit costs after the initial appropriation, the Secretary may license additional APICs, or as hereinafter provided, increase the credit subsidy allocated to an APIC as an award for high performance under this Act.

(d) Cooperation and Coordination-

(1) PROGRAM POLICIES- The Secretary is authorized to coordinate and cooperate, through memoranda of understanding, an APIC liaison committee, or otherwise, with the Administrator, the Secretary of the Treasury, and other agencies in the discretion of the Secretary, on implementation of this Act, including regulation, examination, and monitoring of APICs under this Act.

(2) OPERATIONS- The Secretary may carry out this Act--

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

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

(e) FEES AND CHARGES FOR ADMINISTRATIVE COSTS- To the extent provided in appropriations Acts, the Secretary is

authorized to impose fees and charges for application, review, licensing, and regulation, or other actions under this Act, and to pay for the costs of such activities from the fees and charges collected.

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

(g) FUNDING-

(1) AUTHORIZATION FOR APPROPRIATION OF COST OF ANNUAL LOAN GUARANTEE COMMITMENT- For each of fiscal years 2000, 2001, 2002, and 2003, there is authorized to be appropriated up to $36,000,000 for the cost of annual loan guarantee commitments under this Act. The Secretary may make commitments to guarantee loans only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $1,000,000,000, or the amount specified in appropriations Acts in each such fiscal year. Amounts appropriated under this paragraph shall remain available for 5 years.

(2) AUTHORIZATION FOR APPROPRIATION OF ADMINISTRATIVE EXPENSES-

For each of the fiscal years 2000, 2001, 2002, and 2003, there is authorized to be appropriated $1,000,000 for administrative expenses for carrying out this Act. The Secretary may transfer amounts appropriated under this paragraph to any appropriation account of HUD or another agency, to carry out the program under this Act. Any agency to which the Secretary may transfer amounts under this Act is authorized to accept such transferred amounts in any appropriation account of such agency.

SEC. 5. SELECTION OF APIC'S.

(a) NOTICE OF COMPETITIONS- The Secretary shall select APICs for licensing on the basis of competitions. Such competitions shall be announced by a Federal Register notice that invites applications for APIC licenses. Each such notice shall set forth application requirements, and such other terms of the competition not otherwise provided for, as determined by the Secretary.

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

(1) The applicant shall be a private for profit entity that qualifies as a community development entity for the purposes of New Markets Tax Credits.

(2) The entity must, as of the time that the license is approved, have reasonably available to it, as determined by the Secretary, a minimum of $25,000,000 in equity capital, as determined by the Secretary.

(3) The entity must demonstrate that its managers are qualified, and have the knowledge, experience, and capability necessary to raise large amounts of capital and make investments for community economic development in distressed areas.

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

(5) The entity must prepare and submit an investment strategy that includes benchmarks for evaluation of its progress.

(6) The entity must prepare and submit a statement of public purpose goals. The statement shall include elements specified by the Secretary, including proposed measurements and strategies for meeting the goals. The goals shall promote community and economic development, and include at least--

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

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

(C) involvement of community-based organizations and residents in community development activities.

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

(8) The entity must agree to comply with applicable laws, including Federal executive orders, Office of Management and Budget circulars, and Treasury requirements,

and such operating and regulatory requirements as the Secretary may impose from time to time.

(9) The entity must satisfy other application requirements that the Secretary may impose by regulation or Federal Register notice.

(c) COMMUNICATIONS BETWEEN HUD AND APPLICANTS DURING SELECTION PROCESS-

(1) The Secretary shall set forth in regulations the procedures under which HUD, on the one hand, and applicants for APIC licenses, and others, on the other hand, may communicate. Such regulations shall--

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

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

(C) restrict such officers and employees from revealing to any applicant--

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

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

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

(2) 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 is amended by inserting before the period at the end a comma and `or any license provided under the America's Private Investment Companies Act'.

SEC. 6. OPERATIONS OF APIC'S.

(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;

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

(C) as the Secretary may prescribe by regulation.

(2) Nothing in this Act shall preclude an APIC or its investors from receiving an allocation of New Market Tax Credits if the APIC satisfies the applicable terms and conditions under the Internal Revenue Code of 1986.

(b) INVESTMENT LIMITATIONS-

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

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

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

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

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

(A) the APIC's equity capital, plus

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

(c) BORROWING POWERS--DEBENTURES-

(1) ISSUING- An APIC may issue debentures that the Secretary may guarantee under the terms of this Act.

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

(A) the total amount of debentures that an APIC issues under this Act that an APIC may have outstanding at any one time shall not exceed an amount equal to 200 percent of the equity capital of the APIC, as determined by the Secretary: *Provided,* That the Secretary may by regulation increase the foregoing percentage to up to 300 percent for all APICs, or any reasonable class of APICs; and

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

(3) REPAYMENT-

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

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

(C) Until an APIC has repaid all interest and principal amounts on APIC borrowings under this subsection, an APIC may use the proceeds of investments in accordance with regulations issued by the Secretary only to--

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

(ii) pay for the reasonable administrative expenses of the APIC;

(iii) purchase Treasury securities;

(iv) repay interest and principal amounts on APIC borrowings under this subsection;

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

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

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

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

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

(f) BANKRUPTCY RESTRICTION--EXCLUSION OF APIC FROM DEFINITION OF DEBTOR- Section 109(b)(2) of title 11 of the United States Code is amended by inserting before `credit union' the following: `America's Private Investment Companies licensed by the Department of Housing and Urban Development under the

America's Private Investment Companies Act,'.

SEC. 7. CREDIT ENHANCEMENT BY THE FEDERAL GOVERNMENT.

(a) ISSUANCE AND GUARANTEE OF DEBENTURES- Consistent with the Federal Credit Reform Act of 1990, the Secretary is authorized to make commitments to guarantee and guarantee the timely payment of all principal and interest as scheduled on, debentures issued by APICs. Such commitments or guarantees may be made by the Secretary on such terms and conditions, including but not limited to amounts, expirations, number, priorities of repayment, security, collateral, amortization, payment of interest (including the timing thereof), and fees and charges, as the Secretary determines to be appropriate, in documents that the Secretary approves for any commitment or guarantee, or pursuant to regulations issued by the Secretary. Debentures guaranteed by the Secretary under this subsection shall be senior to any debt obligation, equity contribution or earnings, or the distribution of dividends, interest, or other amounts of an APIC, notwithstanding any Federal or other law. Debentures may be issued for a term of not to exceed 21 years and shall bear interest during all or any part of that time period at a rate or rates approved by the Secretary. The debentures shall also contain such other terms as the Secretary may fix.

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

(c) Guarantee of Trust Certificates-

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

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

(3) PROPORTIONATE REDUCTION OPTION- In the event that the Secretary elects not to exercise the option under paragraph (2), and a debenture in such trust is prepaid, or in the event of default of a debenture, the guarantee of timely payment of principal and interest on the trust certificate shall be reduced in proportion to the amount of principal and interest that such prepaid debenture represents in the trust. Interest on prepaid or defaulted debentures shall accure and be guaranteed by the Secretary only through the date of payment of the guarantee. During the term of a trust certificate, it may be called for redemption due to prepayment or default of all debentures that are in the corpus of the trust.

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

(e) Subrogation and Liens-

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

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

(f) Registration-

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

(2) The Secretary may contract with an agent or agents to carry out on behalf of the Secretary the pooling and the central registrations functions of this section notwithstanding any other provisions of law, including maintenance on behalf of and under the direction of the Secretary, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts backed by debentures guaranteed under this Act and the

issuance of trust certificates to facilitate formation of the corpus of the trusts. The Secretary may require such agent or agents to provide a fidelity bond or insurance in such amounts as the Secretary determines to be necessary to protect the interests of the Government.

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

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

SEC. 8. APIC REQUESTS FOR GUARANTEE ACTIONS.

(a) ALL APIC REQUESTS FOR HUD GUARANTEE ACTION- An APIC may request that the Secretary guarantee a debenture that the APIC intends to issue, in accordance with the Secretary's regulations. All such requests shall include a description of the manner in which the APIC intends to use the proceeds from such debenture. All such requests shall also include certification by the APIC that the APIC is in substantial compliance with--

(1) this Act and other applicable laws;

(2) all terms and conditions of its license, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding;

(3) all requirements relating to the allocation and use of New Markets Tax Credits; and

(4) any other requirements that the Secretary may specify under regulations.

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

(c) Responsibility for Environmental Reviews-

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

(2) Assumption of responsibility by cognizant unit of general government-

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

assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 and such other provisions of law that further such Act as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake the funding of such investments as a Federal action.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) specify that the certifying officer--

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and

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

SEC. 9. EXAMINATION AND MONITORING OF APIC'S.

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

(b) Monitoring, Updating, and Program Review-

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

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

(3) Examination standards-

(A) SOUND FINANCIAL MANAGEMENT PRACTICES- The Secretary shall examine each APIC to ensure, as a matter of sound financial management practices, substantial compliance with this and other applicable laws, including Federal executive orders, Department of Treasury and Office of Management and Budget guidance, circulars, and application and licensing requirements on a continuing basis. The Secretary may set any additional sound financial management practices standards by regulation, including standards that address solvency and financial exposure.

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

SEC. 10. INCENTIVES AND PENALTIES.

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

(b) Penalties-

(1) IN GENERAL- The Secretary may penalize any APIC, or any manager of an APIC, in the event such APIC or a manager of the APIC commits an act of fraud, mismanagement, or noncompliance with this Act or regulations thereunder or a condition of the APIC's license under this Act. The Secretary in regulations shall identify, by generic description of a role or responsibilities, any manager of an APIC that is subject to this subsection.

(2) PENALTIES REQUIRING NOTICE AND HEARING- With respect to an act of commission or omission under paragraph (1) for which the Secretary may penalize an APIC or a manager, the Secretary may, following notice in writing to the APIC or the manager, and opportunity for administrative hearing--

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

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

(C) revoke the APIC's license.

(3) PENALTIES REQUIRING NOTICE AND AN OPPORTUNITY TO RESPOND- With respect to any act of commission or omission under paragraph (1) for which the Secretary may penalize an

APIC or a manager, following notice in writing and an opportunity for the APIC or manager to respond, impose any reasonable penalty. Such a penalty may, in addition to any others, be--

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

(B) the suspension of an APIC's license, or the conditioning of the use of an APIC's license, for up to 90 days, including the deferral for the period of the suspension of a commitment to guarantee any new debenture of the APIC; or

(C) any other penalty that the Secretary determines to be less burdensome to the APIC than a penalty that requires notice and an administrative hearing under this Act.

(c) Procedures-

(1) No award under this section shall be made until notice thereof is published in the Federal Register.

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

(3)(A) The Secretary may suspend or condition an APIC's license for up to 45 days without prior notice in the Federal Register, but such suspension or conditioning shall take effect only after the Secretary has issued a written notice (including a writing in electronic form) of such action to the APIC. Such written notice shall be effective without regard to whether the APIC has been accorded the opportunity to respond. Such suspension or conditioning shall be subject to enforcement by an order of a court when the Secretary has issued such written notice.

(B) After such suspension or conditioning takes effect, the Secretary shall promptly cause a notice of suspension or conditioning of such license for up to 90 days to be published in the Federal Register. The APIC shall be entitled to respond to such notice. In counting the time period of the suspension or conditioning, the first day shall be the day that written notice under this paragraph is issued.

(C) During the time period of such suspension or conditioning, the Secretary may proceed under subsection (b)(2), and in accordance with the procedures applicable to such subsection, to revoke the APIC's license. Only if the Secretary so proceeds, notwithstanding any other provision of this section, the Secretary may extend the suspension or conditioning of the APIC's license by publishing a notice of such action in the Federal Register--

> (i) for the first such extension, before the up to 90 days under subparagraph (B) expires; and
>
> (ii) for any subsequent extensions of up to 90 days, before the preceding period of up to 90 days expires.

(D) The suspension or conditioning of an APIC's license by the Secretary under this paragraph shall remain in effect in accordance with its terms until final adjudication in any litigation undertaken to challenge such suspension or conditioning, or revocation, of an APIC's license.

END

HR 2848 IH

106th CONGRESS

1st Session

H. R. 2848

To amend the Small Business Investment Act of 1958 and the Small Business Act to establish a New Markets Venture Capital Program, to establish an America's Private Investment Company Program, to amend the Internal Revenue Code of 1986 to establish a New Markets Tax Credit, and for other purposes.

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 jurisdiciton of the committee concerned

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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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `New Markets Initiative Act of 1999'.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE II--SMALL BUSINESS LOANS

TITLE III--AMERICA'S PRIVATE INVESTMENT COMPANIES

TITLE IV--NEW MARKETS CREDIT

TITLE I--NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 101. NEW MARKETS VENTURE CAPITAL PROGRAM.

Title III of the Small Business Investment Act of 1958 is amended--

(1) in the heading, by striking `SMALL BUSINESS INVESTMENT COMPANIES' and inserting `INVESTMENT DIVISION PROGRAMS';

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

`Part A--Small Business Investment Companies';

and

(3) by adding at the end the following:

`Part B--New Markets Venture Capital Program

`SEC. 350. DEFINITIONS.

`In this part--

`(1) the term `New Markets Venture Capital company' means a company that--

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

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

`(2) the term `low- or moderate-income geographic area' means--

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

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

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

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

`(B) any area located within--

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

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

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

`(3) the term `participation agreement' means an agreement between the Administration and a New Markets Venture Capital company--

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

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

`SEC. 351. PURPOSES.

`The purposes of the New Markets Venture Capital Program are--

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

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

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

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

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

`SEC. 352. ESTABLISHMENT OF PROGRAM.

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

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

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

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

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

`(a) ELIGIBILITY- A company shall be eligible for participation in the New Markets Venture Capital Program if--

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

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

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

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

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

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

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

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

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

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

`(c) CONDITIONAL APPROVAL-

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

`(2) SELECTION CRITERIA- In selecting companies under paragraph (1), the Administration shall consider the following:

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

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

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

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

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

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

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

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

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

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

`(2) NON-ADMINISTRATION RESOURCES FOR TECHNICAL ASSISTANCE-

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

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

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

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

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

`(ii) must have purchased an annuity--

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

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

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

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

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

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

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

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

`SEC. 354. DEBENTURES.

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

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

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

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

`SEC. 355. TECHNICAL ASSISTANCE GRANTS.

`(a) IN GENERAL-

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

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

`(2) GRANT AMOUNT-

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

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

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

`(b) SUPPLEMENTAL GRANTS-

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

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

`SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

`(a) ISSUANCE- The Administration may issue trust certificates representing ownership of all or a fractional part of debentures issued by New Markets Venture Capital companies and guaranteed by the Administration under this Act, if such certificates are based on and

backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

`(b) GUARANTEE-

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

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

`(3) PREPAYMENT OR DEFAULT- In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

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

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

`(e) SUBROGATION AND OWNERSHIP RIGHTS-

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

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

`(f) MANAGEMENT AND ADMINISTRATION-

`(1) REGISTRATION-

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

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

`(2) CONTRACTING OF FUNCTIONS-

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

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

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

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

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

`SEC. 357. FEES.

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

`SEC. 358. BANK PARTICIPATION.

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

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

`SEC. 359. FEDERAL FINANCING BANK.

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

`SEC. 360. REPORTING REQUIREMENTS.

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

`SEC. 361. EXAMINATIONS.

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

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

`(c) COSTS-

`(A) IN GENERAL- The Administrator may assess the cost of examinations under this

section, including compensation of the examiners, against the company examined.

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

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

`SEC. 362. INJUNCTIONS AND OTHER ORDERS.

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

Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

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

`(c) ADMINISTRATION AS TRUSTEE OR RECEIVER-

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

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

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

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

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

`(c) UNLAWFUL ACTS- Except with the written consent of the Administration, it shall be unlawful--

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

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

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

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

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

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

`(d) REMOVAL OR SUSPENSION-

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

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

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

`(i) this Act,

`(ii) any regulation issued under this Act, or

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

`(B) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty, and that such violation or

such breach of fiduciary duty is one involving personal dishonesty on the part of such person.

`SEC. 364. REGULATIONS.

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

`SEC. 365. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 102. CONFORMING AMENDMENTS.

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

(1) by striking `TITLE III--SMALL BUSINESS INVESTMENT COMPANIES' and inserting the following:

`TITLE III--INVESTMENT DIVISION PROGRAMS

`Part A--Small Business Investment Companies';

and

(2) by inserting after the item relating to section 322 the following:

`Part B--New Markets Venture Capital Program

SEC. 103. BANKRUPTCY EXEMPTION FOR NEW MARKETS VENTURE CAPITAL COMPANIES.

Section 109(b)(2) of title 11, United States Code, is amended by inserting `a New Markets Venture Capital company as defined in section 350 of the Small Business Investment Act of 1958,' after `homestead association,'.

SEC. 104. FEDERAL SAVINGS ASSOCIATIONS.

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

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

TITLE II--SMALL BUSINESS LOANS

SEC. 201. PARTICIPATION RATE.

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

SEC. 202. GUARANTEE FEE.

Section 7(a)(18)(B) of the Small Business Act (15 U.S.C. 636(a)(18)(B)) is amended by striking `$80,000' and inserting `$120,000'.

SEC. 203. GUARANTEE REDUCTION.

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

TITLE III--AMERICA'S PRIVATE INVESTMENT COMPANIES

SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) CONGRESSIONAL FINDINGS-

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

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

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

(b) PURPOSES- The purposes of this Act are to--

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

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

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

SEC. 302. DEFINITIONS.

As used in this Act:

(1) The term `Agency' has the meaning given such term in section 551(1) of title 5, United States Code.

(2) The term `APIC' means a business entity that has been licensed under the terms of this

Act as an America's Private Investment Company, and the license of which has not been revoked.

(3) The term `Administrator' means the Administrator of the Small Business Administration.

(4) The term `community development entity' means an entity whose primary mission must be serving or providing investment capital for low-income communities or low-income persons, which maintains accountability to residents of low-income communities, and which has 60 percent of its aggregate gross assets invested in low-income community investments or residential property located in low-income communities.

(5) The term `cost' has the meaning set forth in section 502(5) of the Federal Credit Reform Act of 1990.

(6) The term `debentures' means debt instruments the terms of any of which may be specified by the Secretary.

(7) The term `HUD' means the Secretary of Housing and Urban Development or the Department of Housing and Urban Development, as the context requires.

(8) The term `low-income communities' means census tracts with (A) poverty rates of at least 20 percent, based on the most recent census data; or (B) median family income that does not exceed 80 percent of the greater of (i) metropolitan area median family income, or (ii) statewide median family income.

(9) The term `qualified low-income community investments' means equity investments in, or loans to, qualified active businesses located in low-income communities.

(10) The term `qualified active business' means a business or trade--

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

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

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

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

(11) The term `Secretary' means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

SEC. 303. AUTHORIZATION.

(a) LICENSES- The Secretary is authorized to license America's Private Investment Companies, in accordance with the terms of this Act.

(b) REGULATIONS- The Secretary is authorized to regulate APICs for compliance with sound financial management practices, and the program and procedural goals of this and other related Acts, and other purposes as required or authorized by this Act, or determined by the Secretary. The Secretary may issue regulations, Federal Register notices, and other guidance or directives to carry out licensing and regulatory and other duties under this Act.

(c) USE OF CREDIT SUBSIDY FOR LICENSES-

(1) NUMBER OF LICENSES- The Secretary is authorized to have outstanding at any one time the number of licenses for APICs that may be supported by the amount of the budget authority appropriated in accordance with the Federal Credit Reform Act of 1990 for the subsidy cost and the investment strategies of such APICs.

(2) USE OF CREDIT SUBSIDY AFTER INITIAL APPROPRIATION TO HUD- With respect to any appropriation of budget authority for the credit costs after the initial appropriation, the Secretary may license additional APICs, or as hereinafter provided, increase the credit subsidy allocated to an APIC as an award for high performance under this Act.

(d) COOPERATION AND COORDINATION-

(1) PROGRAM POLICIES- The Secretary is authorized to coordinate and cooperate, through memoranda of understanding, an APIC liaison committee, or otherwise, with the Administrator, the Secretary of the Treasury, and other agencies in the discretion of the Secretary, on implementation of this Act, including regulation, examination, and monitoring of APICs under this Act.

(2) OPERATIONS- The Secretary may carry out this Act--

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

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

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

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

(g) FUNDING-

(1) AUTHORIZATION FOR APPROPRIATION OF COST OF ANNUAL LOAN GUARANTEE COMMITMENT- For each of fiscal years 2000, 2001, 2002, and 2003, there is authorized to be appropriated up to $36,000,000 for the cost of annual loan guarantee commitments under this Act. The Secretary may make commitments to guarantee loans only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $1,000,000,000, or the amount specified in appropriations Acts in each such fiscal year. Amounts appropriated under this paragraph shall remain available for 5 years.

(2) AUTHORIZATION FOR APPROPRIATION OF ADMINISTRATIVE EXPENSES- For each of the fiscal years 2000, 2001, 2002, and 2003, there is authorized to be appropriated $1,000,000 for administrative expenses for carrying out this Act. The Secretary may transfer amounts appropriated under this paragraph to any appropriation account of HUD or another agency, to carry out the program under this Act. Any agency to which the Secretary may transfer amounts under this Act is authorized to accept such transferred amounts in any appropriation account of such agency.

SEC. 304. SELECTION OF APICS.

(a) NOTICE OF COMPETITIONS- The Secretary shall select APICs for licensing on the basis of competitions. Such competitions shall be announced by a Federal Register notice that invites applications for APIC licenses. Each such notice shall set forth application requirements, and such other terms of the competition not otherwise provided for, as determined by the Secretary.

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

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

(2) The entity must, as of the time that the license is approved, have reasonably available to it, as determined by the Secretary, a minimum of $25,000,000 in equity capital, as determined by the Secretary.

(3) The entity must demonstrate that its managers are qualified, and have the knowledge, experience, and capability necessary to raise large amounts of capital and make investments for community economic development in distressed areas.

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

(5) The entity must prepare and submit an investment strategy that includes benchmarks for evaluation of its progress.

(6) The entity must prepare and submit a statement of public purpose goals. The statement shall include elements specified by the Secretary, including proposed measurements and strategies for meeting the goals. The goals shall promote community and economic development, and include at least--

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

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

(C) involvement of community-based organizations and residents in community development activities.

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

(8) The entity must agree to comply with applicable laws, including Federal executive orders, Office of Management and Budget circulars, and Treasury requirements, and such operating and regulatory requirements as the Secretary may impose from time to time.

(9) The entity must satisfy other application requirements that the Secretary may impose by regulation or Federal Register notice.

(c) COMMUNICATIONS BETWEEN HUD AND APPLICANTS DURING SELECTION PROCESS-

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

hand, and applicants for APIC licenses, and others, on the other hand, may communicate. Such regulations shall--

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

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

(C) restrict such officers and employees from revealing to any applicant--

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

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

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

(2) 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;

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

(C) as the Secretary may prescribe by regulation.

(2) Nothing in this Act shall preclude an APIC or its investors from receiving an allocation of New Market Tax Credits (to the extent such credits are established under Federal law) if the APIC satisfies

any applicable terms and conditions under the Internal Revenue Code of 1986.

(b) INVESTMENT LIMITATIONS-

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

(A) amounts available from the proceeds of the issuance of an APICs debenture guaranteed under this Act;

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

(C) the use of equity capital, as determined by the Secretary, in an amount specified in the APICs license.

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

(A) the APICs equity capital; plus

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

(c) BORROWING POWERS; DEBENTURES-

(1) ISSUING- An APIC may issue debentures that the Secretary may guarantee under the terms of this Act.

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

(A) the total amount of debentures that an APIC issues under this Act that an APIC may have outstanding at any one time shall not exceed an amount equal to 200 percent of the equity capital of the APIC, as determined by the Secretary: *Provided,* That the Secretary may by regulation increase the foregoing percentage to up to 300 percent for all APICs, or any reasonable class of APICs; and

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

(3) REPAYMENT-

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

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

(C) Until an APIC has repaid all interest and principal amounts on APIC borrowings under this subsection, an APIC may use the proceeds of investments in accordance with regulations issued by the Secretary only to--

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

(ii) pay for the reasonable administrative expenses of the APIC;

(iii) purchase Treasury securities;

(iv) repay interest and principal amounts on APIC borrowings under this subsection;

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

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

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

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

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

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

SEC. 306. CREDIT ENHANCEMENT BY THE FEDERAL GOVERNMENT.

(a) ISSUANCE AND GUARANTEE OF DEBENTURES- Consistent with the Federal Credit Reform Act of 1990, the Secretary is authorized to make commitments to guarantee and guarantee the timely payment of all principal

and interest as scheduled on, debentures issued by APICs. Such commitments or guarantees may be made by the Secretary on such terms and conditions, including but not limited to amounts, expirations, number, priorities of repayment, security, collateral, amortization, payment of interest (including the timing thereof), and fees and charges, as the Secretary determines to be appropriate, in documents that the Secretary approves for any commitment or guarantee, or pursuant to regulations issued by the Secretary. Debentures guaranteed by the Secretary under this subsection shall be senior to any debt obligation, equity contribution or earnings, or the distribution of dividends, interest, or other amounts of an APIC, notwithstanding any Federal or other law. Debentures may be issued for a term of not to exceed 21 years and shall bear interest during all or any part of that time period at a rate or rates approved by the Secretary. The debentures shall also contain such other terms as the Secretary may fix.

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

(c) GUARANTEE OF TRUST CERTIFICATES-

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

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

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

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

(e) SUBROGATION AND LIENS-

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

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

(f) REGISTRATION-

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

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

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

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

SEC. 307. APIC REQUESTS FOR GUARANTEE ACTIONS.

(a) ALL APIC REQUESTS FOR HUD GUARANTEE ACTION- An APIC may request that the Secretary guarantee a debenture that the APIC intends to issue, in accordance with the Secretary's regulations. All such requests shall include a description of the manner in which the APIC intends to use the proceeds from such debenture. All such requests shall also include certification by the APIC that the APIC is in substantial compliance with--

(1) this Act and other applicable laws;

(2) all terms and conditions of its license, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding;

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

(4) any other requirements that the Secretary may specify under regulations.

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

(c) RESPONSIBILITY FOR ENVIRONMENTAL REVIEWS-

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

(2) ASSUMPTION OF RESPONSIBILITY BY COGNIZANT UNIT OF GENERAL GOVERNMENT-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) specify that the certifying officer--

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and

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

SEC. 308. EXAMINATION AND MONITORING OF APICS.

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

(b) MONITORING, UPDATING, AND PROGRAM REVIEW-

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

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

(3) EXAMINATION STANDARDS-

(A) SOUND FINANCIAL MANAGEMENT PRACTICES- The Secretary shall examine each APIC to ensure, as a matter of sound financial management practices, substantial compliance with this and other applicable laws, including Federal executive orders, Department of Treasury and Office of Management and Budget guidance, circulars, and application and licensing requirements on a continuing basis. The Secretary may set any additional sound financial management practices standards by regulation, including standards that address solvency and financial exposure.

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

SEC. 309. INCENTIVES AND PENALTIES.

(a) INCENTIVES- From amounts of budget authority appropriated after the initial appropriation for the cost of annual loan guarantee commitments under this Act, the Secretary may increase the credit subsidy allocated to an APIC, in the Secretary's discretion, as an award for high

performance of the APIC in carrying out its investment strategy and statement of public purpose goals.

(b) PENALTIES-

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

(2) PENALTIES REQUIRING NOTICE AND HEARING- With respect to an act of commission or omission under paragraph (1) for which the Secretary may penalize an APIC or a manager, the Secretary may, following notice in writing to the APIC or the manager, and opportunity for administrative hearing--

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

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

(C) revoke the APICs license.

(3) PENALTIES REQUIRING NOTICE AND AN OPPORTUNITY TO RESPOND- With respect to any act of commission or omission under paragraph (1) for which the Secretary may penalize an APIC or a manager, following notice in writing and an opportunity for the APIC or manager to respond, impose any reasonable penalty. Such a penalty may, in addition to any others, be--

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

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

(C) any other penalty that the Secretary determines to be less burdensome to the APIC than a penalty that requires notice and an administrative hearing under this Act.

(c) PROCEDURES-

(1) No award under this section shall be made until notice thereof is published in the Federal Register.

(2) No civil money penalty, or other penalty under subsection (b), except suspension or conditioning of an APICs license under subsection (b)(3)(B), shall be due and payable, or otherwise take effect, or be subject to enforcement by an order of a court, until notice thereof is published in the Federal Register.

(3)(A) The Secretary may suspend or condition an APICs license for up to 45 days without prior notice in the Federal Register, but such suspension or conditioning shall take effect only after the Secretary has issued a written notice (including a writing in electronic form) of such action to the APIC. Such written notice shall be effective without regard to whether the APIC has been accorded the opportunity to respond. Such suspension or conditioning shall be subject to enforcement by an order of a court when the Secretary has issued such written notice.

(B) After such suspension or conditioning takes effect, the Secretary shall promptly cause a notice of suspension or conditioning of such license for a period of up to 90 days to be published in the Federal Register. The APIC shall be entitled to respond to such notice. In counting the time period of the suspension or conditioning, the first day shall be the day that written notice under this paragraph is issued.

(C) During the time period of such suspension or conditioning, the Secretary may proceed under subsection (b)(2), and in accordance with the procedures applicable to such subsection, to revoke the APICs license. Only if the Secretary so proceeds, notwithstanding any other provision of this section, the Secretary may extend the suspension or conditioning of the APICs license by publishing a notice of such action in the Federal Register--

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

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

(D) The suspension or conditioning of an APICs license by the Secretary under this paragraph shall remain in effect in accordance with its terms until final adjudication in any litigation undertaken to challenge such suspension or conditioning, or revocation, of an APICs license.

TITLE IV--NEW MARKETS CREDIT

SEC. 401. NEW MARKETS TAX CREDIT.

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

`SEC. 45D. NEW MARKETS TAX CREDIT.

`(a) ALLOWANCE OF CREDIT-

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

`(2) CREDIT ALLOWANCE DATE- The term `credit allowance date' means, with respect to any qualified equity investment--

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

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

`(b) QUALIFIED EQUITY INVESTMENT- For purposes of this section--

`(1) IN GENERAL- The term `qualified equity investment' means any equity investment in a qualified community development entity if--

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

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

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

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

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

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

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

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

`(6) EQUITY INVESTMENT- The term `equity investment' means--

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

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

`(c) QUALIFIED COMMUNITY DEVELOPMENT ENTITY- For purposes of this section--

`(1) IN GENERAL- The term `qualified community development entity' means any domestic corporation or partnership if--

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

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

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

`(2) SPECIAL RULES FOR CERTAIN ORGANIZATIONS- The requirements of paragraph (1) shall be treated as met by--

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

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

`(d) QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS- For purposes of this section--

`(1) IN GENERAL- The term `qualified low-income community investment' means--

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

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

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

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

`(2) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS-

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

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

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

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

`(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable

to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

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

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

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

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

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

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

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

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

`(1) IN GENERAL- The term `low-income community' means any population census tract if--

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

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

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

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

`(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED-

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

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

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

`(g) RECAPTURE OF CREDIT IN CERTAIN CASES-

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

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

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

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

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

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

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

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

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

`(4) SPECIAL RULES-

`(A) TAX BENEFIT RULE- The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards

and carrybacks under section 39 shall be appropriately adjusted.

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

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

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

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

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

`(3) which impose appropriate reporting requirements, and

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

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT-

(1) IN GENERAL- Subsection (b) of section 38 of such Code is amended by striking `plus' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting `, plus', and by adding at the end the following new paragraph:

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

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

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

(c) DEDUCTION FOR UNUSED CREDIT- Subsection (c) of section 196 of such Code is amended by striking `and' at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting `, and', and by adding at the end the following new paragraph:

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

(d) CLERICAL AMENDMENT- The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

`Sec. 45D. New markets tax credit.'

(e) EFFECTIVE DATE- The amendments made by this section shall apply to investments made after December 31, 1999.

END

PRESIDENT CLINTON APPLAUDS THE INTRODUCTION OF NEW MARKETS LEGISLATION
September 27, 1999

"When government provides the conditions and tools [and] acts as a catalyst to bring the power of the private sector to benefit all of our citizens... this is not only good economics, it is the right thing to do. We can build one America where nobody is left behind when we cross the bridge into a new century. And if we do, we'll all be better off."

--- President Clinton, The New Markets Tour, July 8, 1999

PRESIDENT CLINTON APPLAUDS THE INTRODUCTION OF NEW MARKETS LEGISLATION IN CONGRESS. Three important elements of President Clinton's New Markets Initiative have been introduced in both the Senate and the House. The New Markets Initiative is designed to spur $15 billion in new private investment in under-served areas. The initiative was originally proposed and included in President Clinton and Vice President Gore's FY 2000 budget. The proposal will help encourage private sector equity investment in under-served communities and low and moderate-income areas throughout the country:

- **The New Markets Tax Credit.** This tax credit will be available to investment funds, banks and institutions that are financing businesses in low- and moderate-income communities. The proposed tax credit is worth 25 percent for investments in a wide range of investment vehicles. Eligible investment companies include community development banks, venture funds and corporations, and the new investment company programs created by the New Markets Initiative. These investment entities must have a primary mission of investing in these communities to receive the credit. The New Markets Tax Credit is expected to help spur $6 billion in equity capital for investment in America's underserved communities. Representative Rangel has introduced this proposal in the House (H.R.2713) and Senator Rockefeller has introduced legislation in the Senate (S.1526).
- **America's Private Investment Companies (APICs).** Just as America's support for the Overseas Private Investment Corporation helps promote growth in emerging markets abroad, APIC will encourage private investment in this country's untapped markets. Senator Sarbanes and Congressman LaFalce have introduced legislation in the Senate (S. 1655) and the House (H.R. 2764) that would create APICs--an investment vehicle to provide loan guarantees or guarantee debt to an investment fund to help lower the cost of capital. The government will guarantee up to $200 million in loans, creating investment funds as large as $300 million to invest in new development projects and larger businesses that are expanding or relocating in inner city and rural areas. The cost to the federal government for APICs, which will result in one billion dollars in funding for economic development, is only $37 million. Under the financing structure, the private investors' funds are at risk ahead of the government.
- **New Markets Venture Capital (NMVC) Firms.** NMVC firms will provide incentives to increase the availability of venture capital in low and moderate income communities for small businesses. The program wil also make expert guidance available to small business entrepreneurs in inner city and rural areas. Ten to twenty NMVC firms are planned. SBA will match the equity and technical assistance of private investors. Senator John Kerry introduced this legislation (S. 1594) in the Senate and it is expected that a proposal will be introduced shortly by Representative Velazquez in the House.

ADDITIONAL ELEMENTS OF THE NEW MARKETS INITIATIVE. In addition to the above legislation, President Clinton's New Markets Initiative includes several other elements, some of which will require new legislation and others that are expansions of existing initiatives.

- **SBIC's Targeted to New Markets.** For over 40 years, SBA's Small Business Investment Company (SBIC) program has provided roughly $20 billion in equity and debt financing to more than 85,000 different companies, helping them to grow from small businesses to household names, like AOL and Staples. However, too little of the capital invested has benefited our cities and rural distressed communities. Through regulatory changes that will soon be proposed, SBA will be able to offer more flexibility and new financing terms for Small Business Investment Companies (SBICs) that invest in under-served areas.

- **Microenterprise Lending and Technical Assistance.** Microenterprise initiatives in the FY 2000 budget include the proposed PRIME Act, under which the CDFI Fund will provide micro-enterprise technical assistance through competitive grants to micro-enterprise development organizations that focus on low-income entrepreneurs. President Clinton's and Vice President Gore's proposal also includes a doubling of support for technical assistance in SBA's Microloan Program and a doubling of support for SBA lending to leverage over $75 million in new microlending. The microenterprise strategy will also involve new funding for Individual Development Accounts (IDAs) and for SBA's One-Stop Capital Shops.
- **Community Development Financial Institutions (CDFI) Fund.** The New Markets Initiative would expand funding for the CDFI Fund to $125 million--a $30 million increase from FY 1999. The Fund increases the availability of credit, investment capital, financial services, and other development services in distressed communities.
- **BusinessLINC.** The President's FY 2000 budget includes seed money to expand Business LINC-- an innovative public-private partnership launched by Vice President Gore --- for new markets in economically distressed communities. BusinessLINC (Learning, Information, Networking and Collaboration) is designed to encourage large businesses to work with small business owners and entrepreneurs. The Business Roundtable Table (BRT) has agreed to be the lead organization for the BusinessLINC National Coalition. Their efforts to expand include the creation of six new BusinessLINC chapters in Washington, DC, Dallas, Boston, Chicago, the Mississippi Delta and New York City. In addition, BusinessLINC hopes to double the number of local chapters to 12 by the end of its first year.

A RECORD TO BUILD ON. This legislation expands upon the innovative approach to community empowerment that President Clinton and the Vice President have pioneered for nearly seven years.

- **Creating the CDFI Fund.** In 1994, President Clinton proposed and signed into law the CDFI Fund which, through grants, loans, and equity investments, is helping to create a network of community development financial institutions in distressed areas across the United States.
- **Reforming CRA.** In 1995, the Clinton Administration reformed the CRA regulations to emphasize performance. The private sector has pledged more than $1 trillion going forward in loans to distressed communities – and more than 95% of these financial commitments have been made since 1992. (NCRC)
- **Creating the Empowerment Zones.** President Clinton and Vice President Gore proposed and signed Empowerment Zone legislation in 1993 establishing 105 EZs and ECs across the country. The EZ/EC effort has generated billions of dollars in new private sector investment in community development activities.
- **Brownfields and Second Round of EZs.** The Administration's Brownfields action agenda has marshaled funds to clean up and redevelop up to 5,000 properties, leveraging billions of dollars in private investment and creating and supporting 196,000 jobs. The President has also signed into law a second round of EZs – 15 new urban and 5 new rural zones.
- **Youth Opportunity Initiative and GEAR-UP.** In addition to expanding the Earned Income Tax Credit and raising the minimum wage, President Clinton has focused on bringing economic opportunity to young people through the Youth Opportunity initiative and GEAR-UP program. The Youth Opportunity initiative provides skills training leading to job opportunities for out-of-school youth aged 16-24. GEAR-UP helps disadvantaged high-school students prepare for college through mentoring and other forms of assistance.

CONTINUED NEW MARKETS EFFORTS. As part of a bipartisan focus on under-served urban and rural areas, President Clinton will continue to seek ways to expand current community development and investment efforts in New Markets. The President's New Markets Tour during the week of July 5, helped to bring attention to conditions in economically distressed communities and also highlighted examples of private sector solutions that our legislative proposal will help to encourage and support. President Clinton will continue to make announcements throughout this year about efforts to attract private sector investment to impoverished, untapped markets throughout the nation. These announcements include visits later this year to New Markets where private companies are developing innovative investment partnerships and initiatives. Plans area also underway for the President to tour the country again on a second New Markets trip scheduled for this Fall.

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Louis.Cupp@sba.gov
08/12/99 01:18:36 PM

Record Type: Record

To: Lisa Green/OPD/EOP

cc: Jane.Merkin@sba.gov
Subject: Congressional activity on New Markets

- NEC list mtgs.doc

SBA Administrator Aida Alvarez has met with the following Members of Congress:

SENATE	HOUSE
Senator Christopher "Kit" Bond (R-MO) Senator John F. Kerry (D-MA) Senator Conrad Burns (R-MT) Senator Spencer Abraham (R-MI) Senator Judd Gregg (R-NH) Senator Byron Dorgan (D-ND) Senator Paul Wellstone (D-MN)	Representative Jim Talent (R-MO) Representative Nydia Velazquez (D-NY) Representative Danny Davis (D-IL) Representative Jose Serrano (D-NY) Representative Lucille Roybal-Allard (D-CA) Representative James Clyburn (D-SC) Representative William Jefferson (D-LA) Representative Ike Skelton (D-MO)

Additionally, Administrator Alvarez has addressed both the Congressional Hispanic Caucus and the Congressional Black Caucus on New Markets.

SBA staff has met with the following Members of Congress' staff:

SENATE	
Senator Christopher "Kit" Bond (R-MO) Senator Olympia Snowe (R-ME) Senator Mike Crapo (R-ID) Senator Conrad Burns (R-MT) Senator Thad Cochran (R-MS) Senator Mike DeWine (R-OH) Senator Spencer Abraham (R-MI) Senator Judd Gregg (R-NH) Senator Ben Nighthorse Campbell (R-CO) Senator Pete Domenici (R-NM)	Senator John F. Kerry (D-MA) Senator Paul Wellstone (D-MN) Senator John Edwards (D-NC) Senator Frank Lautenberg (D-NJ) Senator Patrick Leahy (D-VT) Senator Jeff Bingaman (D-NM) Senator Blanche Lincoln (D-AR) Senator Ted Kennedy (D-MA) Senator Ernest F. Hollings (D-SC) Senator Daniel K. Inouye (D-HI)
HOUSE	
Representative Jim Talent (R-MO) Representative Jim Leach (R-IA) Representative Ralph Regula (R-OH) Representative Tom Latham (R-IA) Representative Zach Wamp (R-TN)	Representative Nydia Velazquez (D-NY) Representative Stephanie Tubbs Jones (D-OH) Representative Danny Davis (D-IL) Representative David Phelps (D-IL) Representative Mark Udall (D-CO) Representative Jan Schakowsky (D-IL) Representative John J. LaFalce (D-NY) Representative Julian C. Dixon (D-CA) Representative Alan Mollohan (D-WV) Representative Silvestre Reyes (D-TX)

Additionally, SBA staff has participated in staff briefings of the following: House and Senate Small Business Committees, House Banking Committee, and the Congressional Hispanic

Caucus and Congressional Black Caucus.

"David S. Kass" <David_S._Kass@HUD.GOV>
08/11/99 05:59:02 PM

Record Type: Record

To: Lisa Green/OPD/EOP

cc:
Subject: APIC briefings

Hi Lisa. We did an APIC briefing for our two committees, the House Banking Committee (attended by Rep. LaFalce) and the Senate Banking Committee Democrats (which I think you attended). We've also met w/ staff for Senators Lugar, Jeffords, and Hagel, and Rep. Kanjorski. We recently did a HUD budget briefing for the Congressional Black Caucus and the Hispanic Caucus where we spent a fair amount of time on APIC and the New Markets Initiative. We will follow up with the Senate offices and the sponsors in the House and Senate. Just to let you know, I'll be on vacation next week and the week after. I hope you're well. -David

"David S. Kass" <David_S._Kass@HUD.GOV>
08/12/99 10:24:49 AM

Record Type: Record

To: Lisa Green/OPD/EOP

cc: Xavier Briggs <Xavier_Briggs@HUD.GOV>
Subject: APIC briefings

Xav reminded me this morning that HUD also did APIC briefings for Senator Edwards' staff and Rep. Jesse Jackson Jr.

-David

[redacted]

Record Type: Record

To: Lisa Green/OPD/EOP@EOP

cc:
Subject: briefings

Hey Lisa --

Lara and Jane have told me that they have briefed everyone on the Finance and Small Business Committees. I know David has spoken to a number of folks on the Banking Committee, but I don't know who for sure.

In addition, you and I (or just me) have spoken to:

Burns,
Durbin,
Kennedy,
Snowe,
Collins,
Conrad,
Cochran,
Dewine,
Feingold, and
Grassley.

In addition, I have put in calls to about 35 other Republicans. Our assistants are doing follow calls today and tomorrow to schedule meetings throughout the recess.

Lara.Muldoon@do.treas.gov
08/12/99 11:32:25 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Paul J. Weinstein Jr./OPD/EOP, Stephanie A. Cutter/WHO/EOP
Subject: briefings on New Markets tax piece

Date: 08/12/1999 11:23 am (Thursday)
From: Lara Muldoon
To: DOPO6.BARRM, DOPO6.KELLOGGC, ex.mail."Lisa_Green@opd.eop.gov",
ex.mail."david_s._kass@hud.gov",
ex.mail."Don.christensen@sba.gov",
ex.mail."jonesm@cdfi.treas.gov", ex.mail."jorszag@doc.gov",
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ex.mail."Broderick_Johnson@who.eop.gov",
ex.mail."xavier_briggs@hud.gov",
ex.mail."Joel_K._Wiginton@who.eop.gov"
CC: ex.mail."Paul_J._Weinstein_Jr@opd.eop.gov",
ex.mail."Stephanie_A._Cutter@who.eop.gov"
Subject: briefings on New Markets tax piece

Lisa has asked that we all share our past contacts with the Hill on this.
This is a quick list and there may be others when I review my notes.

In addition to the meetings, I have talked with several staff on the phone.
Those contacts are not all reflected in this list.

Hope this is helpful.

- BRIEIF~1.DOC

Message Sent To:

Michael.Barr@do.treas.gov
Cliff.Kellogg@do.treas.gov
Broderick Johnson/WHO/EOP
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Don.christensen@sba.gov
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Rep J.C Watt	5/25	
Rep. Kanjorski	5/26	
Rep LaFlace	8/5	
Rep Rangel	ongoing discussions	Has taken lead on cosponsors and has previously asked us not to call (before the bill was dropped).
Rep Talent	5/25	
Sen Cochran	8/5	
Sen DeWine	8/5	
Sen DPC*	4/27	
Sen Edwards	4/8	
Sen Jeffords	3/30	
Sen Kennedy	8/5	
Sen Robb	4/13	
Sen Rockefeller	4/8	
Sen Sarbanes	4/22	

* Attending the Senate DPC briefing were staff to Senators Durbin, Rockefeller, Edwards, Robb, Kerrey (D-NE), Leahy, Kennedy, Dodd, Daschle, Harkin, Johnson, Biden, Senate Finance Committee, Bayh, Toricelli., Boxer, and Baucus

TALKING POINTS FOR PHONE CALL WITH VELASQUEZ

- Thank you for your hard work and the hard work of Michael Day on the New Markets Venture Capital bill. The Administration is very appreciative of your efforts.

- **We also appreciate and understand your desire to make the bill as acceptable as possible to both parties to ensure its passage.** I understand that you may be making some headway in obtaining Republican support for your bill, which would be a tremendous boost for the entire New Markets Initiative.

- I know that your staff has been working closely with Patty Forbes from Senator Kerry's office, SBA and my staff to come up with language that will ensure that this program is used to serve those businesses and communities in need.

- **We want to be sure that the funds from the New Market Ventures Capital program are used to finance the hardest to serve areas and those businesses that are not currently being served by traditional markets and those not being served by the existing SBIC programs.**

- As you know the New Market Ventures Capital program will provide needed technical assistance and guaranteed debt to make Community Development Venture Capital funds viable.

- **The research prepared by SBA (see attached summary) for your staff indicated that the current SBIC program is not providing funds broadly to New Markets or to the type of Community Development Venture Capital funds that will utilize this program.** The venture capital funds that will be eligible for this program must have a social mission and a commitment to serving distressed communities.

- **Note:** We have heard that the conventional SBIC industry has some concerns about the NMVC proposal and they have been lobbying Velasquez heavily. They are worried that the NMVC program will compete with the existing program and take business away from them. **The attached evidence shows that these are not overlapping markets because**
  1) the size of the investments that will made by NMVC firms are much smaller than those made by existing SBICs in low and moderate income areas and
  2) existing SBIC investments in Low and Moderate Income areas are primarily concentrated in high income states (such as California, New York and Massachusetts) and in urban areas. Conventional SBICs can find extremely profitable investments in these markets --- however these are the cream of the crop deals and not the tough deals that will be done by Community Development Venture Capital funds with a social mission.

- We are looking forward to working with you and your staff to come up with legislative language that accomplishes our mutual goal of creating a program to serve those businesses and communities that are most in need.

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS
IN LOW AND MODERATE ZONES

Total capital invested equaled $58,955,856, including approximately $3MM invested by Developmental SBICs. **This is 1.84% of total SBIC investments made during 1998.**

Four state, CA, TX, NY and MA, accounted for 55% of the $59 million. California alone accounted for 28% of the $59 million, with Silicone Valley accounting for 81% of that total.

Only 2 investments were in rural areas. These investments totaled $1.1MM , 1.9% of the total capital invested.

35 states received a total of $1 MM or less in financing.

28 states received a total of $500 K or less in financing.

20 states received no capital at all.

DRAFT

September 18, 1999

Dear Mr. Speaker:

I was very pleased this summer when you expressed an interest in working together on meaningful legislation to address the investment needs that our nation's underserved urban rural areas – or New Markets – currently face. I am writing to ask you to join me in a good faith effort to pass legislation that meets this objective.

As you know I have proposed the New Markets Initiative, which is designed to spur equity capital investment, build jobs, and create economic opportunities in America's underserved communities. I am aware that several members of your party have proposed the American Community Renewal Act, which is designed to accomplish some of the same goals. We also appreciate last week's Republican introduction of H.R. 2848, the New Markets Initiative Act, by request.

We owe it the American people to work out a good faith bi-partisan proposal. I am sure you understand that we may have some good faith disagreements about certain provisions of the American Community Renewal Act such as the zero capital gains tax. However, there are many provisions of the Talent-Watts bill that we believe could be incorporated into the New Markets Initiative. There are elements we would be willing to accept, specifically:

- Brownfields Expensing;
- Family Development Accounts;
- Work Opportunity Tax Credit; and
- Commercial Revitalization Tax Credit.

It is my hope that we can work together to find common ground and reach agreement on ways to meet the needs of America's economically distressed communities. There is no time to waste. We are ready to negotiate with whomever you designate, as soon as possible. I look forward to hearing from you shortly.

Sincerely Yours,

President William Jefferson Clinton