Lara.Muldoon@do.treas.gov
09/27/99 11:09:26 AM

Record Type: Record

To: Lisa Green/OPD/EOP

cc: Marne.Levine@do.treas.gov
Subject: Kerry on PRIME bill

Date: 09/27/1999 11:06 am (Monday)
From: Lara Muldoon
To: lisa-NEC
CC: levinem
Subject: Kerry on PRIME bill

I just spoke with Kerry's staffer on this bill (S. 900) and the rumors are true. They have big problems with the PRIME bill as drafted in the Senate and prefer the House SBC amended language.

Apparently, this has been part of an ongoing discussion for the past two years. There are signed interagency memoes between SBA/Treasury on this issue. The small business committee contends that PRIME could ruin their microloan program and the assertions that the PRIME program and SBA's microloan program are incompatible are false.

Kerry's staff said they will hold pretty firm on this and feel that they have been mislead by the Administration and Treasury on this issue.

I am trying to get copies of the memoes to see what is in them.

Lara

U.S. Small Business Administration

SBA

Fax Transmission Cover Sheet

The U.S. Small Business Administration offers opportunities for all Americans to start, build and grow their own businesses into the 21st century.

To: LISA GREEN

Organization:

Phone: Fax:

Date: Time:

Number of Pages (including this page): 5

From: LOUIS CUPP

Office:

Phone: Fax:

Message: FYI

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Did you know that in fiscal year 19 the SBA –

- maintained a guaranteed loan portfolio of more than $40 billion in loans to 491,000 small businesses that otherwise would not have had such access to capital?
- backed more than 47,100 loans totaling a record $10.8 billion to America's small businesses?
- made a record 3,456 investments worth $3.24 billion through its venture capital program?
- provided more than 30,000 loans totaling over $728 million to disaster victims for residential, personal-property and business loans?
- extended management and technical assistance to nearly 830,000 small businesses through its 12,400 Service Corps of Retired Executive volunteers and 1,000 small business development center locations?
- helped 6,000 small disadvantaged businesses obtain $5.9 billion in federal contracts?

Did you know that America's 23 million small businesses –

- employ more than 50 percent of the private workforce.
- generate more than half of the nation's gross domestic product, and
- are the principal source of new jobs?

Call us at 1-800-U-ASK-SBA or visit our website at www.sba.gov

[DISCUSSION DRAFT]

106TH CONGRESS
1ST SESSION

H.R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. WYNN introduced the following bill; which was referred to the Committee on ____________

A BILL

To amend the Small Business Act to authorize the Small Business Administration to participate at an increased rate with respect to certain small business loans.

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 "[to be supplied] Act of 1999".

SEC. 2. AUTHORITY TO PARTICIPATE AT INCREASED RATE.

(a) DEFINITION.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

"(r) DEFINITION OF LOW- OR MODERATE-INCOME GEOGRAPHIC AREA.—In this Act, the term 'low- or moderate-income geographic area' means—

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

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

"(B) 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

"(C) 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

"(2) any area located within—

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

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

"(C) a rural Empowerment Zone or a Rural Enterprise Community, as designated by the Secretary of the Department of Agriculture."

(b) PARTICIPATION RATE.—Section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636(a)(1)(A)) is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; or"; and

(3) by inserting at the end the following new clause:

"(iii) 90 percent of the balance of the financing outstanding at the time of disbursement of the loan, if—

"(I) such balance is less than or equal to $75,000; and

"(II) such loan is made to a small business concern [located and doing business in] a low- or moderate-income geographic area."

Provision	New Markets Tax Credit (Administration Budget/ Rangel Bill – H.R. 2713)	Conference Agreement (H.R. 2488)	Senate (S. 1429)	House (H.R. 2488)	H.R. 815 Watts-Talent
Capital gains for sales of business property and assets in a designated area.	No provision.	Zero percent capital gains for sale of business property and assets held for more than 5 years in renewal communities.	No provision.	Same as Conference.	Same as Conference.
Tax Credit/ Deduction	Treasury Department allocates tax credit for $6 billion of new investment in selected community development investment entities. Investors claim a 6 percent credit for each year during the five-year period after investment.	Commercial revitalization deduction: either a 50 percent deduction or 10 percent deduction for 10 years allocated for nonresidential building investment. Up to $6 million per State per renewal community.	No provision.	Same as Conference.	Commercial revitalization tax credit: a 20 percent allocated credit for nonresidential building investment. Up to $2 million per State per renewal community.
Expensing for depreciable property used by small businesses	No provision.	$35,000 of additional expensing for depreciable property used by small businesses in certain renewal communities.	No provision.	Same as Conference.	Same as Conference.
Brownfields	Not included in Rangel bill. Permanent extension of §198 expensing is included in the Administration's budget. H.R 1630 in House (Coyne with Rangel cosponsor).	Brownfields expensing available beyond 2000 in renewal communities.	No provision.	Same as Conference.	Same as Conference.
Work Opportunity Tax Credit (WOTC)	No provision in Rangel Bill (H.R. 2713). The Administration has included a one-year extension to the credit to include those who begin work before July 1, 2000. The credit percentage is 25% of wages for at least 120 hours to 400 hours and 40% for more than 400 hours of employment. The maximum amount of qualified wages paid to an individual is $6,000.	Renewal community youth receive the same treatment as EZ youth under WOTC. If WOTC expires, WOTC targeted group added of renewal community residents who work in the community. Credit is more generous $10,000 of wages at 15 percent for the first year and 30 percent for the second year.	No provision.	Same as Conference.	WOTC targeted group added of renewal community residents who work in the community. Credit is more generous $10,000 of wages at 15 percent for the first year and 30 percent for the second year.

Provision	**New Markets Tax Credit (Administration Budget/ Rangel Bill – H.R. 2713)**	**Conference Agreement (H.R. 2488)**	**Senate (S. 1429)**	**House (H.R. 2488)**	**H.R. 815 Watts-Talent**
Family Development Accounts	No provision. Leiberman has a proposal for Individual Development Accounts -- IDA's (S. 895). Treasury has provided technical assistance to Sen. Leiberman's staff but has not endorsed the proposal.	Family development accounts (FDA) for renewal community residents who receive the EITC. Deductible contributions up to $2,000 per year ($1,000 by others on behalf of renewal residents). Earnings tax-free and no tax on withdrawal if used for specific expenses.	No provision.	Same as Conference but in 5 renewal communities, 50 percent match. Tax paid on withdrawal for this part of the FDA.	Same as House.
Designation of new EZ/ECs, additional areas.	No provision. (Note: the Administration and Rep. Rangel are seeking to provide full funding for two round 2 EZs and to extend the wage credit for these zones for an additional two years from 2007 to 2009)	HUD would designate 20 renewal communities of which 4 in rural areas, 10 EZs or ECs.	No provision.	Same as Conference.	HUD would designate 100 renewal communities of which 20 in rural areas, 50 EZs or ECs.
Definition of Low Income Communities	Selected community development entities must invest in businesses located in tracts with poverty rates of at least 20 percent, or the median income does not exceed the greater of (1) 80 percent of statewide median, or (2) in the area, 80 percent of the area median.	Renewal Communities chosen by competition (as in the EZ program). Areas with poverty rates of at least 20 percent, 1 2 times unemployment rate, and 70 percent of households with median incomes no greater than 80 percent of the median for the area.	No provision.	Same as Conference.	Same as Conference.
Effective Date	For new investments from 1/1/00 through 12/31/04.	Designation 1/1/01 through 12/31/07.	No provision.	Same as Conference.	Same as Conference.

Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Authority and Issuance

For the reasons set out in the preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 30—SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1831p–1, 3102(b).

2. In § 30.2, the last sentence is revised to read as follows:

§ 30.2 Purpose.

* * * The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness are set forth in appendix B to this part, and the Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part.

3. In § 30.3, paragraph (a) is revised to read as follows:

§ 30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness set forth in appendix B to this part, or the Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part

* * * * *

4. A new appendix C is added to part 30 to read as follows:

Appendix C to Part 30—Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers

Table of Contents

A. Introduction

These Supplemental Guidelines are issued pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) and apply to transfer agent and broker or dealer systems that a national bank has not designated as mission-critical. These Supplemental Guidelines are in addition to, but do not supersede, the Year 2000 Guidelines previously adopted as Appendix B to 12 CFR Part 30. The Guidelines in Appendix B continue to apply to efforts of national banks to achieve Year 2000 readiness of their mission-critical systems.

B. Preservation of existing authority

Neither section 39 nor these Supplemental Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices of bank transfer agents and brokers or dealers. For example, failure to complete any of the standards set forth in the Supplemental Guidelines may constitute an unsafe or unsound practice under 12 U.S.C. 1818(b). Action under section 39 and the Supplemental Guidelines may be taken independently of, in conjunction with, or in addition to any other remedy, including enforcement action, available to the OCC.

C. Definitions

1. In general. For purposes of the Supplemental Guidelines the following definitions apply:

a. *Bank transfer agent* means a national bank that provides transfer agent services directly or through an operating subsidiary, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p–1), if the national bank, operating subsidiary or Federal branch is a registered transfer agent whose appropriate regulatory agency, as that term is defined in 15 U.S.C. 78c(a)(34), is the Office of the Comptroller of the Currency. The term bank transfer agent does not include a transfer agent that qualifies as an issuer or small transfer agent, as these terms are defined in 17 CFR 240.17Ad–13(d) (1) and (2).

b. *Bank broker or dealer* means a national bank that effects securities brokerage or dealer transactions for customers, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. [illegible]) [illegible] bank broker or dealer [illegible] operating subsidiary [illegible]. The term bank broker [illegible] include a national bank [illegible] than 500 securities brokerage transactions per year for customers during the prior three calendar year period.

c. *System* means an automated system and related applications necessary to ensure the prompt and accurate processing of securities transactions, including order entry, transfer execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, the delivery of funds and securities, or the production or retention of required records.

d. *Business resumption contingency plan* means a plan that describes how a bank transfer agent or bank broker or dealer will continue to perform transfer agent or broker or dealer functions, respectively, in the event transfer agent or broker or dealer systems fail to function because of Year 2000 readiness.

e. *Year 2000 ready or readiness with respect to a system* means the system accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

D. Year 2000 standards for safety and soundness

1. No later than November 1, 1999, each bank transfer agent and bank broker or dealer shall identify all transfer agent and broker or dealer systems that are not Year 2000 ready.

2. For each system identified pursuant to section D.1., each bank transfer agent and bank broker or dealer shall develop and implement an effective written business resumption contingency plan by November 15, 1999, that, at a minimum:

a. Defines scenarios for transfer agent and broker or dealer systems failing to achieve Year 2000 readiness;

b. Evaluates options and selects a reasonable contingency strategy for those systems; and

c. Provides for independent testing of the business resumption contingency plan by an objective independent party (such as an auditor, consultant, or qualified individual from another area of the insured depository institution who is independent of the plan under review).

Dated: September 17, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–25442 Filed 9–29–99; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In order to encourage small business investment companies (SBICs) to invest in inner cities and rural areas and in businesses that serve such areas, the Small Business Administration (SBA) is introducing a [illegible] investment category [illegible] and moderate income inv[illegible] (LMI

Investments). For each SBIC financing that qualifies as an LMI Investment, SBA is modifying its regulations on control of the small business, "cost of money" of the financing, and term of the financing. SBA also will make available a patient form of debenture leverage that may be issued only by SBICs that make LMI Investments.

DATES: *Effective Date:* This final rule is effective September 30, 1999.

Applicability Date: The regulatory and financial incentives described in this rule will apply only to investments made after September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Investment Division, at (202) 205–3646.

SUPPLEMENTARY INFORMATION: On February 9, 1999, SBA proposed a program of narrowly-tailored regulatory and financial incentives to encourage SBICs to expand their investment activity into inner cities and rural areas. See 64 FR 6256. The incentives were proposed to be available to any SBIC making qualified investments (LMI Investments) in qualified small businesses (LMI Enterprises) located in or providing employment for economically distressed inner cities and rural areas (LMI Zones). The incentives fell into two categories. First, SBA proposed to allow SBICs greater regulatory flexibility when structuring and making LMI Investments. Second, SBA proposed to make available a deferred-interest debenture exclusively for the financing of LMI Investments.

SBA received four comment letters on the proposed rule during the 30-day public comment period. Overall, the four letters were supportive of SBA's initiative, although all of the letters contained suggestions for improving the proposal. This final rule incorporates certain of the changes recommended in those comment letters.

Defining Low and Moderate Income Zones (LMI Zones)

SBA received two comments on the definition of the markets targeted by the proposed LMI initiative. The proposed rule defined those markets as small businesses that are located in certain distressed geographic areas or that have 35 percent of their full time employees [illegible] areas.

[illegible] comments suggested [illegible] historically [illegible] *entrepreneurs*, regardless [illegible] location, instead of [illegible] *geographic areas*. The other comment suggested expanding the geographic areas identified in the proposed rule to include some or all of the markets targeted for economic development by the Federal Home Loan Banks. Those markets are set forth in the Community Investment Cash Advance regulation of the Federal Housing Finance Board. They include any project that provides jobs or services for individuals with income levels at or below certain levels, as well as projects located in geographic areas broader than the locations specified in SBA's proposed rule.

SBA considered the comments, but has decided to adopt the proposed definition of LMI Zone without change. SBA's proposal was designed to bring investment dollars into distressed urban and rural areas to help revitalize those communities and bring jobs to their residents. Given the finite resources available to the LMI initiative, any expansion of the proposal to include groups of individuals without regard to their business locations or their residences would dilute the impact of the benefits SBA hopes will inure to the targeted communities.

SBA also believes that, in order to be successful, the definition of the targeted markets must be easy for SBICs and SBA examiners to use. SBA therefore selected only those geographic areas that are not only distressed, but are also found on a government-operated electronic address-database. Through the use of these user-friendly databases, SBICs and SBA examiners should be able to quickly and easily determine whether a given address is located in an "LMI Zone".

If SBA learns that other severely distressed areas are also capable of identification through a Government electronic address-database, it might consider expanding the targeted markets of the LMI initiative at a later date.

As mentioned in the proposed rule, SBA is exploring the possibility of consolidating the various Government databases into a single electronic database at SBA. While that possibility still exists, any such consolidation is unlikely to be accomplished this calendar year. Until SBICs are notified otherwise, they should research addresses through the various databases referenced in this rule, and should document their files accordingly.

As was stated in the proposed rule, any address located in a HUBZone, an Empowerment Zone, an Enterprise Community, a Low or Moderate Income area, or a Persistent Poverty county will be considered to be located in an LMI Zone. The government databases for those five areas are:

1. HUBZones: *www.sba.gov/hubzone/hubqual.html*
2. Empowerment Zones: *www.hud.gov/ezec/locator/*
3. Enterprise Communities: same as for Empowerment Zones
4. Low and Moderate Income areas: *www.ffiec.gov/geocode*
5. Persistent Poverty counties: *www.econ.ag.gov/epubs/other/typolog*

Defining LMI Enterprise

SBA received one comment on the proposed definition of LMI Enterprise. Under the proposal, a small business's qualification as an LMI Enterprise would be determined as of the time the business applies for SBIC financing. This would be true whether the business were qualifying under the "principal place of business" test or the "percentage of employees" test.

The commenter pointed out that determining a small business's qualification under the principal place of business test "as of the time of application for SBIC financing" would exclude those small businesses that would use the proceeds of the SBIC financing to move into an LMI Zone. That is true. Similarly, determining a small business's qualification under the percentage of employees test "as of the time of application for SBIC financing" would exclude those small business that would use the proceeds of the SBIC financing to expand their business and hire new employees from LMI Zones. SBA had thought that determining a business's qualification based only on its intention to locate into or hire from eligible areas would introduce too much uncertainty into the program.

Upon reconsideration of the issue, however, SBA believes that the rule can be modified in a manner that will encourage businesses to use SBIC financing to locate in LMI Zones or to hire residents of LMI Zones, while minimizing the risk that the incentives in this LMI initiative will be misused. SBA believes this can be accomplished by allowing companies that intend either to locate in or to hire from an LMI Zone a fixed period of time after closing on their SBIC financing to do so. During that time, the business would be considered an LMI Enterprise. At the end of the period, though, the business would lose its LMI status if it had not located in an LMI Zone or qualified as an LMI Enterprise under the percentage of employees test.

SBA believes that a company should be able to establish its principal place of business in an LMI Zone or hire employees from an LMI Zone within 180 days from the date the SBIC financing closes. Six months should be ample time for a company to resolve any zoning or other issues that might delay the opening of the business in an LMI

Zone or the hiring of residents from an LMI Zone.

Accordingly, the final rule allows a company to temporarily qualify as an LMI Enterprise if, at the time of application for SBIC financing, the company certifies as to its intent to locate its principal place of business in an LMI Zone or its intent to hire the required number of residents of LMI Zones, in either case within 180 days after the SBIC financing closes. At the end of the 180-day period, if the company does not have its principal place of business in an LMI Zone or 35 percent of its employees residing in LMI Zones, it will no longer qualify as an LMI Enterprise. This means that the SBIC's financing of the company will no longer qualify as an LMI Investment.

SBA has considered whether the SBIC or the small business should bear the risk of the small business' loss of qualification as an LMI Enterprise and the financing's loss of qualification as an LMI Investment. If the loss of LMI qualification constitutes a default by the small business under the financing and the SBIC can demand repayment or redemption of the financing, the small business bears most of the risk. If loss of LMI qualification does not constitute a default, the SBIC must continue to hold its investment in the company and must revise the terms of the financing to conform to standard (non-LMI) SBA regulations (e.g., minimum term, control restrictions). In that event, the SBIC alone bears the risk since the small business gets the benefit of SBIC financing on standard (non-LMI) terms.

SBA has concluded that the parties themselves (the SBIC and the small business) should determine who is to bear the risk of the loss of LMI qualification. The terms of the financing agreement negotiated between the small business and the SBIC should specify whether the loss of qualification as an LMI Enterprise constitutes a default by the small business under the financing. If the loss of qualification as an LMI Enterprise does not constitute a default under the financing agreement, the SBIC must be sure that the terms of the financing, going forward, satisfy SBA requirements for non-LMI financings (e.g., minimum term; control restrictions). If the loss of qualification as an LMI Enterprise does constitute a default under the financing agreement, the SBIC will be entitled to whatever remedies are available to it for the default.

The proposed version of § 107.610(e) required each LMI Enterprise to certify to the investing SBIC as to the location of either its principal place of business or the primary residences of all of its full-time employees. The certification was to be dated no earlier than the date the small business applied for the SBIC financing and was to be kept in the SBIC's files, along with the SBIC's own certification that the small business qualifies as an LMI Enterprise and the basis for such qualification.

The final version of § 107.610(e) still requires certifications from both the small business and the SBIC, but allows a small business that is intending to locate into an LMI Zone or to hire residents of LMI Zones to so certify. Any small business that qualifies as an LMI Enterprise based on its intention to locate in an LMI Zone or to hire residents of LMI Zones must also provide the SBIC with a later certification, dated within the 180 day period discussed above, certifying that its principal place of business is located in an LMI Zone or that it has 35 percent of its employees residing in LMI Zones. The SBIC must make its own certification(s) contemporaneously with the certification(s) of the small business.

SBA has made one final modification to the definition of LMI Enterprise and to § 107.610(e). Since the term "principal place of business" is susceptible to more than one interpretation, SBA has decided to specify precisely what is intended by the term as it relates to LMI Enterprises. SBA believes that an LMI Enterprise's principal place of business should be determined by reference to the location of its employees or tangible assets, not its books and records or its corporate headquarters. This approach is similar to the one used in § 107.720(g)(1)(ii)—SBA's criteria for determining whether a business is a non-U.S. business for purposes of the prohibition on foreign investments in the SBIC Program.

Under the final rule, SBA will consider an LMI Enterprise to be located where at least 50 percent of its employees or tangible assets are located. SBA realizes, though, that the use of the term "principal place of business" may, itself, cause confusion since that term has already been defined differently in other SBA programs. Accordingly, the final rule replaces the term "principal place of business" with the "50% of employees or tangible assets" test in the definition of LMI Enterprise and in § 107.610(e).

Defining LMI Investment

As discussed in the [illegible] SBA wants to ensure [illegible] Program is used to [illegible] capital financing in LMI Zones, [illegible] high-interest lending. SBA is also concerned that LMI Enterprises that receive SBIC financing not be precluded from using their assets to secure third-party debt. SBA therefore proposed that LMI Investments be defined to include only those SBIC financings that are in the form of equity securities (as defined in § 107.800) or debt securities (as defined in § 107.815) which are subordinated to all borrowings of the business from financial institutions. The proposed rule also required that LMI Investments in the form of debt securities be unsecured, although the SBIC would have been permitted to accept a guarantee of the debt security if the guarantee were itself unsecured.

SBA received two comments on the proposed definition of an LMI Investment. Both comments argued in favor of expanding the definition to include debt securities that are secured by the assets of the small business if the security interest is junior to any other secured debt of the business. The commenters argued that excluding secured financing of LMI Enterprises would discourage SBIC support of those businesses. One commenter further argued that an SBIC holding an unsecured position in a company might take more precipitous action to protect its interest than if the SBIC had collateral to protect its position.

SBA concurs with the suggested change to the definition. SBA expects that allowing SBICs to take a junior secured position in the assets of an LMI Enterprise will not prevent the LMI Enterprise from obtaining secured debt from other sources.

This change would place SBICs ahead of any unsecured debt of the LMI Enterprise. SBA believes, though, that unsecured debt is generally unavailable to most LMI Enterprises, except from the principals of the enterprise. Even under the proposed rule, LMI Investments were not required to subordinate in favor of borrowings from the principals of the enterprise. Accordingly, the final definition of LMI Investment includes debt securities that are secured by the assets of the small business *provided* the SBIC's security interest is junior to any other existing or future secured debt of the business.

Regulatory and Financial Incentives

Under the proposed rule, SBA proposed to modify the regulations governing three subject matters, as they would apply to LMI Investments—control of the small business, the treatment of [illegible] in the calculation of [illegible], and minimum term of [illegible]. SBA also discussed its [illegible] a new form of [illegible] for use by SBICs that make LMI Investments.

1. Temporary Control of the LMI Enterprise

SBA proposed to permit SBICs to take temporary control of each business in which they make an LMI Investment. No comments were received on this portion of the proposal. Accordingly, § 107.865(d) is finalized as proposed.

2. Royalties and Cost of Money

SBA proposed to exclude royalty payments on LMI Investments from the calculation of "Cost of Money" under § 107.855. Cost of Money is the term for the sum of the interest rate and other charges that an SBIC imposes on a small business. The Cost of Money to the small business must not exceed the SBIC's Cost of Money ceiling, as computed under § 107.855(c).

To qualify for the proposed exclusion, the royalty would have to be based on improvement in the performance of the LMI Enterprise after the date of the financing. The proposed rule explained that the royalty might be expressed, for example, as a percentage of any *increase* in an underlying unit of measurement (e.g., revenue or sales) after the date of the financing.

SBA received one comment on this provision. The comment asked for clarification as to whether a royalty could be based on an increase in more than one unit of measurement and still be excluded from the Cost of Money calculation. For example, could a royalty provide for payment to the SBIC if either the revenues or the profits of the small business increased?

SBA was not intending to restrict royalties to increases in a single underlying unit of measurement. To do so would force SBICs to determine in advance which performance measurement would be most likely to reflect the improved performance of the small business. A business might have higher profits but steady or even declining revenues, or it might have increased revenues but steady profits. Either circumstance could constitute improvement in the performance of the business.

If an SBIC and a small business agree to a royalty that is expressed as a percentage of increases in alternative performance measurements (e.g., profits or revenues), the royalty will be excluded from Cost of Money. SBA believes that the text of proposed § 107.855 is sufficiently broad to cover this possibility. Accordingly, proposed § 107.855 is finalized without change.

SBA would also like to clarify the application of the royalty provision to any LMI Investments that an SBIC makes through a holding company or an investment vehicle, as permitted under § 107.720(b). In determining whether a business's performance has improved, SBA will look through any holding company or investment vehicle to the performance of the operating business itself. It is the improvement in the operating business's performance, not the improvement in the performance of a holding company or investment vehicle, which would serve as the basis for the calculation of the royalty payment to the SBIC.

Since the publication of the proposed rule, the President signed the Small Business Investment Improvement Act of 1999. See Public Law 106-9, 113 Stat. 17, April 5, 1999. Section 2(a) of the new law excludes certain royalty payments from the calculation of Cost of Money for all investments made by SBICs. SBA will be publishing a proposed rule to implement this change in the near future.

3. Minimum Term of LMI Investment

SBA received no comments on its proposal to set a one-year minimum term for LMI Investments. The proposed changes to §§ 107.835 and 107.850(a) are, therefore, adopted without change.

4. Deferred Interest Debenture

SBA proposed to allow SBICs to finance LMI Investments with a more patient-type of debenture (called an LMI Debenture). No regulatory changes are necessary to create the new debenture, but SBA is continuing to work on its design and method of funding.

The LMI Debenture under development would be a non-amortizing debenture with a term of up to 10 years, issued at a discount so as to be, in effect, "zero coupon" for the first five years. It would require semi-annual interest payments on the face amount for the remainder of the term. SBA leverage fees would not be deferred; they would be paid as required under § 107.1130.

The proposed rule explained that an SBIC's eligibility for LMI Debentures would be based solely on the SBIC's outstanding LMI Investments (made after the effective date of the final rule). SBA has come to the conclusion that this approach might discourage SBICs from making LMI Investments since the LMI Debenture funds would only be available after the Investment had already been made.

Instead, SBA has decided to determine an SBIC's eligibility for LMI Debentures [illegible] outstanding LMI In[illegible] after the effective date [illegible] plus any LMI Investme[illegible] intends to make with the proceeds of the LMI Debenture. If an SBIC with no outstanding LMI Investments applies for a draw down of debenture leverage and intends to use the leverage to make an LMI Investment, SBA can approve the issuance of an LMI Debenture.

As stated in the proposed rule, an SBIC's overall eligibility for an LMI Debenture will still be determined in two ways. First, the SBIC will have to be eligible to issue leverage in an amount equal to the face amount of the LMI Debenture. Eligibility for this purpose is determined under §§ 107.1120–107.1160.

Second, the face amount of the SBIC's requested LMI Debenture, plus the face amount of the SBIC's outstanding LMI Debenture(s), cannot exceed 1.5 times the sum of the SBIC's outstanding LMI Investments plus the proposed LMI Investment. In other words, under this second test an SBIC would be eligible for an LMI Debenture with a face amount equal to (a) 1.5 times the sum of the SBIC's existing and planned LMI Investments at the time of application, minus (b) the face amount of any outstanding LMI Debentures. The 1.5 multiple takes into consideration the zero-coupon feature of the LMI Debenture and allows for an approximate matching of net proceeds of LMI Debentures with funds invested in LMI Investments.

SBA will notify all SBICs when LMI Debentures are ready for use.

The regulatory and financial incentives described in this final rule will apply only to investments made after the effective date of this rule.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule may constitute a significant regulatory action within the meaning of Executive Order 12866, since it raises a new policy issue reflecting the President's priorities.

One of the purposes of the SBIC Program is to encourage the flow of equity-type investments into small businesses. For the first 35 years of the SBIC Program, however, the only type of leverage available to SBICs (other than Specialized SBICs) was debt leverage with interest payable every six months.

Congress recognized this mismatch of source and use of funds and created Partici[illegible] payments on [illegible] a function of [illegible] makes such leverage available only to larger SBICs that can reasonably project returns-on-investments greater than 20 percent.

While the Participating Securities program has been very successful at encouraging SBICs to do equity investing in general, SBA wishes to encourage more equity-type investments in underserved areas or "New Markets"—urban and rural areas that have severe shortages of equity capital. Unfortunately, investments in these areas often are of a type that will not have the potential for yielding returns that are high enough to justify the use of Participating Securities.

The LMI Debenture is being created to fill this gap. It is another type of patient capital, with interest deferred for the first 5 years. An SBIC utilizing the LMI Debenture will not be expected to achieve the high returns expected of Participating Securities users. Thus, the availability of the LMI Debenture is expected to increase the flow of equity-type capital to New Markets.

Some of this increase will come from existing SBICs which find that the LMI Debentures, together with the regulatory incentives in this final rule, will encourage them to make investments that they may perceive as having greater risk than their typical investments. SBA expects these SBICs to make investments in businesses which lie in areas that they have previously overlooked.

While it is expected that existing SBICs will participate to some degree in the LMI program, SBA anticipates that most of the LMI program benefits will derive from new SBICs that are currently being formed and which will be created in the future. Already, SBA is seeing an increase in the number of venture capitalists who are working to form new SBICs with an LMI orientation.

SBA also believes that an increasing number of banks will actively seek to invest in SBICs since a bank's investment in an SBIC is now presumed to satisfy one of the tests under the Community Reinvestment Act (CRA) regulations. SBA expects that many banks will find LMI-oriented SBICs to be especially attractive. This should be true not only because the banks can receive CRA credit for their investment, but also because they will find that (1) such investments expand their urban and rural markets, and (2) with equity infusions of capital, small businesses can become less risky borrowers.

The LMI Debentures have the same subsidy rate as do regular debentures and will carry interest rates similar to those of regular debentures. They present no additional cost either to the government or to the SBICs. Regarding reporting requirements (further discussed below), an SBIC must ascertain that the company in which it is investing meets the LMI standards, and must report this to SBA on its usual financing report (form 1031). The cost to the SBIC to obtain this information is nominal.

SBA certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule will change some requirements to encourage SBICs to make additional qualified investments in low and moderate income zones. In FY 1998, SBICs invested in 2700 small businesses. While the final rule may increase the number of small businesses receiving SBIC investments because SBICs may make investments in smaller increments, the number of small businesses eligible for SBIC investments would not change.

For purposes of the Paperwork Reduction Act, 44 U.S.C. CH. 35, SBA has requested approval to require participating SBICs to report the information they are required to maintain by the final rule. The final rule requires SBICs that make LMI Investments to keep track of their LMI Investments and report them to SBA in connection with applications for LMI Debentures. To determine whether an SBIC is making an LMI Investment, the SBIC will have to verify the location of the LMI Enterprise or its employees using the databases discussed in this rule. SBA estimates that the time necessary to verify the location of an LMI Enterprise or its employees will average less than one hour per LMI Investment. The reporting requirements are de minimis since current forms will only be changed to reflect LMI Investments. SBA further estimates that SBICs may make approximately 500 LMI Investments per year. SBA believes this information is necessary for the proper performance of the function of the agency.

For purposes of Executive Order 12612, SBA certifies that this rule will not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA is amending 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. Amend § 107.50 to add definitions of LMI Enterprise, LMI Investment, and LMI Zone, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

LMI Enterprise means:

(1) A Small Business that has at least 50% of its employees or tangible assets located in LMI Zone(s) or in which at least 35% of the full-time employees have primary residences in LMI Zone(s), in either case determined as of the time of application for SBIC financing; or

(2) A Small Business that does not meet the requirements of paragraph (1) of this definition as of the time of application for SBIC financing but that certifies at such time that it intends to meet the requirements within 180 days after the closing of the SBIC financing. A Small Business qualifying under this paragraph (2) will no longer be an LMI Enterprise as of the 180th day after the closing of the SBIC financing unless, on or before such date, at least 50% of its employees or tangible assets are located in LMI Zones or at least 35% of its full-time employees have primary residences in LMI Zones.

LMI Investment means a financing of an LMI Enterprise, made after September 30, 1999, in the form of equity securities or debt securities that are junior to all existing or future secured borrowings of the business. The debt securities may be guaranteed and may be secured by the assets of the LMI Enterprise, but the guarantee may not be collateralized or otherwise secured.

LMI Zone means any area located within a HUBZone (as defined in 13 CFR 126.103), an Urban Empowerment Zone or Urban Enterprise Community (as designated by the Secretary of the Department of Housing and Urban Development), a Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the Department of Agriculture), an area of Low Income or Moderate Income (as recognized by the Federal Financial Institutions Examination Council), or a county with Persistent Poverty (as classified by the Economic Research Service of the Department of Agriculture).

* * * * *

3. In § 107.610, add paragraph (e) to read as follows:

§ 107.610 Required Certifications for Loans and Investments.

* * * * *

(e) For each LMI Investment:

(1) A certification by the concern, dated as of the date of application for SBIC financing, as to the basis for its qualification as an LMI Enterprise,

(2) If the concern qualifies as an LMI Enterprise as defined in paragraph (2) of the definition of LMI Enterprise in § 107.50, an additional certification dated no later than the date 180 days after the closing of the LMI Investment, as to the location of the concern's employees or tangible assets or the principal residences of its full-time employees as of the date of such certification, and

(3) Certification(s) by the SBIC, made contemporaneously with the certification(s) of the concern, that the concern qualifies as an LMI Enterprise as of the date(s) of the concern's certification(s) and the basis for such qualification.

4. In § 107.835, redesignate paragraph (d) as paragraph (e) and add paragraph (d) to read as follows:

§ 107.835 Exceptions to minimum duration/term of Financing.

* * * * *

(d) An LMI Investment with a term of at least one year; or

* * * * *

5. In § 107.850, revise the introductory text of paragraph (a) to read as follows:

§ 107.850 Restrictions on redemption of Equity Securities.

(a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than five years (or one year in the case of an LMI Investment) from the date of the first closing unless:

* * * * *

6. In § 107.855, add paragraph (g)(12) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").

* * * * *

(g) *Charges excluded from the Cost of Money.* * * *

(12) Royalty payments received under any LMI Investment if the royalty is based on improvement in the performance of the Small Business after the date of the financing.

7. In § 107.865, remove the "or" at the end of paragraph (d)(3), replace the period at the end of paragraph (d)(4) with "; or", add paragraph (d)(5), and revise paragraph (e)(3) to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(d) *Temporary Control permitted.* * * *

(5) If your financing of the Small Business is an LMI Investment.

(e) *Control certification.* * * *

(3) Your agreement to relinquish Control within five years (although you may, under extraordinary circumstances, request SBA's approval of an extension beyond five years). In the case of an LMI Investment with a term of less than five years, you must agree to relinquish Control within the term of the financing.

* * * * *

Dated: May 27, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–25244 Filed 9–29–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. SW–006; Special Condition No. 29–006–SC]

Special Conditions: Garlick Helicopters, Inc. Model GH205A helicopters; 14 CFR Part 21.27(c), aircraft engines installed in surplus Armed Forces aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Garlick Helicopters, Inc. Model GH205A helicopters. This model helicopter will have a novel or unusual design feature(s) associated with the aircraft engines installed in surplus Armed Forces aircraft. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of this special condition is September 22, 1999. Comments must be received on or before November 29, 1999.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of Regional Counsel, Attention: Rules Docket No. SW–006, 2601 Meacham Blvd., Fort Worth, Texas, 76137; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. SW–006. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas, 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected helicopter. In addition, the substance of this special condition has been subject to the public comment process in a prior instance. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Even though comments have been received on this engine special condition, interested persons are invited to submit such additional written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA. This special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. SW–006." The postcard will be date stamped and returned to the commenter.

Background

On December 9, 1993, Garlick Helicopters, Inc. applied for a transport category type certificate for their Model GH205A helicopters that contain military surplus T53-L-13 engines. The

106th Congress 1st Session

A BILL

To amend the Small Business Act and Small Business Investment Act of 1958.

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

TITLE I

New Markets Venture Capital Program

Section 101. New Markets Venture Capital Program. Title III -- SMALL BUSINESS INVESTMENT COMPANIES of the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) is amended by:

(1) striking the words "SMALL BUSINESS INVESTMENT COMPANIES" after TITLE III;

(2) inserting in lieu thereof "INVESTMENT DIVISION PROGRAMS";

(3) inserting "PART A – SMALL BUSINESS INVESTMENT COMPANIES" before section 301; and

(4) adding the following at the end of section 320:

"PART B - NEW MARKETS VENTURE CAPITAL PROGRAM

Sec. 350. DEFINITIONS

As used in this part --

(1) the terms "New Markets Venture Capital company" and "NMVC company" mean a company that has been approved by the Administration under section 353(e) to operate under the New Markets Venture Capital Program and that has entered into a participation agreement with the Administration; and

(2) the term "low- or moderate-income geographics" means-

(A) any population census tract if:

(i) the poverty rate for such tract is at least 20%, or

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

(B) any area located within:

(i) a HUBZone (as defined in 13 CFR § 126.103),

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

(iii) a Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the Department of Agriculture).

In the case of an area which is not tracted for population census tracts, the equivalent county division as defined by the Bureau of the Census for purposes of defining poverty areas shall be used for purposes of determining poverty rate and median family income.

(3) the term "participation agreement" means an agreement between the Administration and a New Markets Venture Capital company, detailing the company's

operating plan and investment criteria and requiring that investments be made in smaller enterprises at least 60% of which are located in those low- or moderate-income geographies defined in paragraph 2(A) of this section.

Sec. 351. PURPOSES

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

(1) to encourage venture capital investment in smaller enterprises located within 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 each NMVC company,

(B) to guarantee debentures of each NMVC company to enable each such company to make venture capital investments in smaller enterprises within urban and rural areas, and

(C) to make grants to each NMVC company for the purpose of providing marketing, management and technical assistance to smaller enterprises financed, or expected to be financed, by such company.

Sec. 352. PROGRAM ESTABLISHMENT

There is established a New Markets Venture Capital Program, under which the Administration may --

(1) enter into a participation agreement with each NMVC company for the purposes stated in section 351;

(2) guarantee debentures issued by each NMVC company as provided in section 354; and

(3) make grants to each NMVC company as provided in section 355.

Sec. 353. SELECTION OF NMVC COMPANIES

(a) ELIGIBILITY TO APPLY. --A company shall be eligible to apply to participate in the New Markets Venture Capital Program if it --

(1) is a newly formed for-profit entity, which may be a newly formed for-profit subsidiary of an existing entity;

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

(3) files its application within a time period established by the Administration.

(b) APPLICATIONS. --As part of its application for participation in the New Markets Venture Capital Program, each applicant shall provide the Administration with --

(1) a business plan that describes how the applicant will make successful venture capital investments in low- or moderate-income geographies (as such term is defined by the Administration) within identified geographic areas;

(2) the qualifications and general business reputation of the company's management;

(3) a description of how the applicant will interface with community organizations;

(4) a proposal describing how grant funds provided under this part would provide marketing, management and technical assistance to smaller enterprises expected to be financed by the company;

(5) measurement criteria by which to evaluate the company's performance in meeting program objectives;

(6) the management and financial strength of any parent or affiliated firms, or any firms essential to the success of the NMVC company's business plan; and

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

(c) SELECTION CRITERIA FOR CONDITIONAL APPROVAL. -- The Administration shall review the applications and shall select companies to be conditionally approved to operate under the New Markets Venture Capital Program. The selection shall be based upon the merits of the application and each company's proposed geographic area of investment so as to promote investment nationwide. The selection criteria shall include:

(1) the likelihood that the applicant will meet the goals of its business plan;

(2) the experience and background of the company's management team;

(3) the need for equity investments within the investment areas;

(4) the extent to which the applicant will concentrate its activities on serving its investment areas;

(5) the likelihood that the applicant will be able to satisfy the conditions under subsection (d);

(6) the extent to which the proposed activities will expand economic opportunities within the investment areas; and

(7) other factors deemed appropriate by the Administration.

(d) CONDITIONAL APPROVAL.—The Administration shall give each conditionally approved company a period of time, not to exceed 24 months, to satisfy the following two conditions --

(1) Capital Requirement. Each company must raise at least $5 million of contributed capital or binding capital commitments from one or more investors (other than an agency of the Federal government) which meet criteria established by the Administration; and

(2) Technical Assistance Matching Requirement.

(A) In order to provide marketing, management and technical assistance, each company:

(i) must have binding commitments (in cash or in-kind) from any source(s) other than the Administration which meet criteria established by the Administration, payable or available over a multi-year period acceptable to the Administration (not to exceed 10 years), in an amount equal to 30% of the capital and commitments raised under subsection (d)(1); or

(ii) must have purchased an annuity from an insurance company acceptable to the Administration, using funds (other than the funds raised to satisfy subsection (d)(1)) from any source other than the Administration, which would yield cash payments over a multi-year period acceptable to the Administration (not to exceed 10 years), in an amount equal to 30% 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 multi-year period acceptable to the Administration (not to exceed 10 years), an amount equal to 30% of the capital and commitments raised under subsection (d)(1); or

(B) In the discretion of the Administrator and based upon a showing of special circumstances and good cause, the Administrator may consider an applicant to have satisfied the requirements of this subsection (d)(2) if it has a viable plan that reasonably projects its capacity to raise the amount (in cash or in-kind) required under subsection (d)(2)(A).

(e) APPROVAL TO OPERATE AS AN NMVC COMPANY. -- The Administration shall grant final approval to operate as an NMVC company to any company selected under subsection (d) that --

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

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

Sec. 354. DEBENTURES

The Administration is authorized, when authorized in appropriations Acts, to guarantee the timely payment of principal and interest as scheduled on debentures issued by NMVC companies. Such guarantees may be made by the Administration on such terms and conditions as it deems appropriate. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this part. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate approved by the Administration. The total face amount of guaranteed debentures that may be outstanding at any one time shall not exceed 150 percent of the contributed capital of the NMVC 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. The debentures shall also contain such other terms as the Administration may require.

Sec. 355. TECHNICAL ASSISTANCE GRANTS

(a) GRANTS. -- The Administration is authorized to make grants to each NMVC company subject to the following:

(1) IN GENERAL. --Each NMVC company shall be eligible to receive grants to be paid upon the direction of the Administration over a multi-year period not to exceed 10 years, containing such terms as the Administration may require, to provide marketing, management and technical assistance for the benefit of smaller enterprises financed, or expected to be financed, by the NMVC company.

(2) GRANT AMOUNT. --The amount of the grant(s) provided by the Administration to each NMVC company under this subsection (a) shall be equal to the NMVC company's technical assistance match (in cash or in-kind) under section 353(d)(2) unless the Administration determines, in the best interests of the program, that the grant(s) should be paid despite the NMVC company's failure to provide the matching amount.

(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

required under subsection (a)(2), the Administration shall make pro rata reductions in the amounts otherwise payable to each NMVC company under such subsection.

(b) SUPPLEMENTAL GRANTS. – The Administration is authorized to provide supplemental grants to any NMVC 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 NMVC company. The Administration may require, as a condition of any supplemental grant made under this subsection (b), that the NMVC company provide a match (in cash or in-kind) from sources other than the Administration equal to the amount of the supplemental grant.

Sec. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES

(a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by NMVC companies and guaranteed by the Administration under this Act: Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to 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. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or in the event of default of 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. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures.

(c) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) The Administration shall not collect a fee for any guarantee under this section: Provided, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) (1) 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) No State or local law, and no Federal 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.

(f) (1) The Administration may provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator may contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, 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 trusts or pools backed by debentures guaranteed under this Act, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

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

Sec. 357. FEES

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

Sec. 358. BANK PARTICIPATION

Any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more NMVC companies, or in any entity established to invest solely in NMVC companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

Sec. 359. FEDERAL FINANCING BANK

Section 318 does not apply to any debenture issued under this part by an NMVC company.

Sec. 360. REPORTING REQUIREMENTS

Each NMVC company will provide such information as the Administration may request, including reporting on the measurement criteria that the NMVC company proposed in its program application.

Sec. 361. EXAMINATIONS

Each NMVC company shall be subject to examinations made at the direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this section shall be deposited in the account for salaries and expenses of the Administration and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.

Sec. 362. INJUNCTIONS AND OTHER ORDERS

(a) Whenever, in the judgment of the Administration, an NMVC company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such NMVC 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) In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the NMVC company and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) The Administration shall have authority to act as trustee or receiver of the NMVC company. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

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

(a) Whenever an NMVC company violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or 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) It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct or the affairs of an NMVC 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 NMVC company has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Except with the written consent of the Administration, it shall be unlawful –

(1) for any person hereafter to take office as an officer, director, or employee of an NMVC company, or to become an agent or participant in the conduct of the affairs or management of an NMVC company, if –

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

(B) he 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; or

(2) for any person to continue to serve in any of the above-described capacities, if –

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

(B) he is hereafter 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) The Administration may serve upon any person identified in this section a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such person –

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

(A) this Act,

(B) any regulation issued under this Act, or

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

(2) 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.

(e) The Administration may remove or suspend any person upon whom the Administration has served a notice under subsection (d) by following the procedures set forth in section 313 of this Act.

Sec. 364. MISCELLANEOUS

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. AUTHORIZATIONS

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

Section 102. Bankruptcy Exemption for New Markets Venture Capital Companies.

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

Section 103. Federal Savings Associations.

Section 1464 (c) (4) of title 12, United States Code, is amended by adding at the end thereof 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. 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."

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

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Bill 2 of 50

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Community Development Venture Capital Assistance Act of 1999 (Introduced in the House)

HR 2812 IH

106th CONGRESS

1st Session

H. R. 2812

To provide for a **community development venture capital** program.

IN THE HOUSE OF REPRESENTATIVES

September 8, 1999

Mr. MCGOVERN (for himself, Mr. DAVIS of Illinois, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HINCHEY, Mr. FROST, Mr. FATTAH, Mr. MARTINEZ, Ms. LEE, and Ms. MILLENDER-MCDONALD) introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To provide for a **community development venture capital** program.

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 `**Community Development Venture Capital** Assistance Act of 1999'.

SEC. 2. FINDINGS.

Congress finds that--

(1) there is a need for the **development** and expansion of organizations that provide private equity **capital** to smaller businesses in areas in which equity-type **capital** is scarce, such as inner cities and rural areas, in order to create and retain jobs for low-income residents of

those areas;

(2) to invest successfully in smaller businesses, particularly in inner cities and rural areas, requires highly specialized investment and management skills;

(3) there is a shortage of professionals who possess such skills and there are few training grounds for individuals to obtain those skills;

(4) providing assistance to organizations that provide specialized technical assistance and training to individuals and organizations seeking to enter or expand in this segment of the market would stimulate small business **development** and entrepreneurship in economically distressed communities; and

(5) assistance from the Federal Government could act as a catalyst to attract investment from the private sector and would help to develop a specialized **venture capital** industry focused on creating jobs, increasing business ownership, and generating wealth in low-income communities.

SEC. 3. COMMUNITY DEVELOPMENT VENTURE CAPITAL ACTIVITIES.

The Small Business Act (15 U.S.C. 631 et seq.) is amended--

(1) by redesignating section 32 as section 33; and

(2) by inserting after section 31 the following:

`SEC. 32. COMMUNITY DEVELOPMENT VENTURE CAPITAL ACTIVITIES.

`(a) DEFINITIONS- In this section:

`(1) **COMMUNITY DEVELOPMENT VENTURE CAPITAL** ORGANIZATION- The term `**community development venture capital** organization' means a privately-controlled organization that--

`(A) has a primary mission of promoting **community development** in low-income communities, as defined by the Administrator, through investment in private business enterprises; or

`(B) administers or is in the process of establishing a **community development venture capital** fund for the purpose of making equity investments in private business enterprises in such communities.

`(2) DEVELOPMENTAL ORGANIZATION- The term `developmental organization'--

`(A) means a public or private entity, including a college or university, that provides technical assistance to **community development venture capital** organizations or that conducts research or training in **community development venture capital** investment; and

`(B) may include an intermediary organization.

`(3) INTERMEDIARY ORGANIZATION- The term `intermediary organization'--

`(A) means a private, nonprofit entity that has--

`(i) a primary mission of promoting **community development** through investment in private businesses in low-income communities; and `(ii) significant prior experience in providing technical assistance or financial assistance to **community development venture capital** organizations;

`(B) may include **community development venture capital** organizations.

`(b) AUTHORITY- In order to promote the **development** of **community development venture capital** organizations, the Administrator, may--

`(1) enter into contracts with 1 or more developmental organizations to carry out training and research activities under subsection (c); and

`(2) make grants in accordance with this section--

`(A) to developmental organizations to carry out training and research activities under subsection (c); and

`(B) to intermediary organizations to provide training and assistance under subsection (d) to **community development venture capital** organizations.

`(c) TRAINING AND RESEARCH ACTIVITIES OF DEVELOPMENTAL ORGANIZATIONS-

`(1) IN GENERAL- Subject to paragraph (2), a developmental organization that receives a grant under subsection (b)(2)(A) shall use the funds made available through the grant for 1 or more of the following training and research activities:

`(A) ENHANCEMENT OF PROFESSIONAL SKILLS- Creating and operating training programs to enhance the professional skills for individuals in **community development venture capital** organizations or operating private **community development venture capital** funds.

`(B) INCREASING INTEREST IN **COMMUNITY DEVELOPMENT VENTURE CAPITAL** - Creating and operating a program to select and place students and recent graduates from business and related professional schools as interns with **community development venture capital** organizations and intermediary organizations for a period of up to 1 year, and to provide stipends for such interns during the internship period.

`(C) PROMOTING `BEST PRACTICES'- Organizing an annual national conference for **community development venture capital** organizations to discuss and share information on the best practices regarding issues relevant to the creation and operation of **community development venture capital** organizations.

`(D) MOBILIZING ACADEMIC RESOURCES- Encouraging the formation of 1 or more centers for the study of **community development venture capital** at graduate schools of business and management, providing funding for the **development** of materials for courses on topics in this area, and providing funding for research on economic, operational, and policy issues relating to **community development venture capital** .

`(2) LIMITATION- The Administrator shall ensure that not more than 25 percent of the amount made available to carry out this section is used for activities described in paragraph (1).

`(d) USE OF GRANT FUNDS BY INTERMEDIARY ORGANIZATIONS- An intermediary organization that receives a grant under subsection (b)(2)(B) shall use the funds made available through the grant to provide training and assistance with respect to marketing, management, and technical issues to promote the **development** of **community development venture capital** organizations, which assistance may include grants to **community development venture capital** organizations for the start up costs and operating support of those organizations.

`(e) MATCHING REQUIREMENT- The Administrator shall require, as a condition of any grant made to an intermediary organization under section (b)(2)(B), that a matching amount equal to the amount of such grant be provided from sources other than the Federal Government.

`(f) REGULATIONS- The Administrator may promulgate such regulations as may be necessary to carry out this section, which regulations may take effect upon issuance.

`(g) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section a total of $20,000,000 for fiscal years 2000 through 2003.'.

SBA Administrator Aida Alvarez has met with the following Members of Congress:

SENATE	HOUSE
Senator Christopher "Kit" Bond (R-MO)	Representative Jim Talent (R-MO)
Senator John F. Kerry (D-MA)	Representative Nydia Velazquez (D-NY)
Senator Conrad Burns (R-MT)	Representative Danny Davis (D-IL)
Senator Spencer Abraham (R-MI)	Representative Jose Serrano (D-NY)
Senator Judd Gregg (R-NH)	Representative Lucille Roybal-Allard (D-CA)
Senator Byron Dorgan (D-ND)	Representative James Clyburn (D-SC)
Senator Paul Wellstone (D-MN)	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 John F. Kerry (D-MA)
Senator Olympia Snowe (R-ME)	Senator Paul Wellstone (D-MN)
Senator Mike Crapo (R-ID)	Senator John Edwards (D-NC)
Senator Conrad Burns (R-MT)	Senator Frank Lautenberg (D-NJ)
Senator Thad Cochran (R-MS)	Senator Patrick Leahy (D-VT)
Senator Mike DeWine (R-OH)	Senator Jeff Bingaman (D-NM)
Senator Spencer Abraham (R-MI)	Senator Blanche Lincoln (D-AR)
Senator Judd Gregg (R-NH)	Senator Ted Kennedy (D-MA)
Senator Ben Nighthorse Campbell (R-CO)	Senator Ernest F. Hollings (D-SC)
Senator Pete Domenici (R-NM)	Senator Daniel K. Inouye (D-HI)
HOUSE	
Representative Jim Talent (R-MO)	Representative Nydia Velazquez (D-NY)
Representative Jim Leach (R-IA)	Representative Stephanie Tubbs Jones (D-OH)
Representative Ralph Regula (R-OH)	Representative Danny Davis (D-IL)
Representative Tom Latham (R-IA)	Representative David Phelps (D-IL)
Representative Zach Wamp (R-TN)	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.

New Markets Briefings

Sen Sarbanes	4/22	APICs
Sen Rockefeller	4/8	Lead sponsor
Sen Robb	4/13	Lead sponsor
Sen Kennedy	8/5	
Sen Jeffords	3/30	
Sen Edwards	4/8	
Sen DPC*	4/27	
Sen DeWine	8/5	
Sen Cochran	8/5	
Rep Rangel	ongoing discussions	Has taken lead on cosponsors and has previously asked us not to offer one-on-one briefings (before the bill was dropped).
Rep. Kanjorski	5/26	
Rep Talent	5/25	
Rep LaFlace	8/5	
Rep J.C Watts	5/25	

* 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

"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

"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

NEWS NEWS

CONGRESSMAN WILLIAM J. "JEFF" JEFFERSON
240 CANNON HOUSE OFFICE BUILDING * WASHINGTON, D.C. 20515
202/225-6636

FOR IMMEDIATE RELEASE 9 p.m., July 14, 1999

WAYS AND MEANS COMMITTEE OKAYS JEFFERSON'S EQUITY CAPITAL FORMATION PROPOSAL TO HELP MINORITY & DISADVANTAGED BUSINESS

Washington, D.C. — The House Ways & Means Committee late Wednesday adopted an amendment by U.S. Rep. William J. Jefferson, D-LA, to enhance tax incentives that could spur $1 billion worth of private investment into venture capital funds that serve minority and disadvantaged businesses in the next decade.

"By enhancing the tax incentives for private investment in minority and disadvantaged business venture capital funds, financial experts think we can generate $1 billion that will reduce the major equity capital gap that continues to hinder growth of minority and disadvantaged businesses in America," Jefferson said.

Jefferson's proposal modifies and expands existing tax incentives, which the five-term New Orleans congressman championed for Specialized Small Business Investment Companies (SSBICS's) in the historic 1993 Balanced Budget Act.

The Ways and Means Committee adopted Jefferson's proposal to expand and modify the 1993 tax incentives as part of new tax legislation under consideration in the 106th Congress.

Current tax incentives permit individuals to shield $50,000 worth of annual capital gains from the sale of publically traded securities from income tax (up to a $500,000 lifetime limit), if proceeds are reinvested in an SSBICS. Corporations were permitted to shield $250,000 annually with a $1 million lifetime cap. Also, an investors can exclude 50 per cent of their gains in return for a minimum five-year investment in an SSBIC.

-more-

Jefferson's modifications will allow:

— The annual cap for individual and corporate capital gains excluded from income is eliminated and the lifetime cap on the amount of capital gains excluded from income is increased from $500,000 to $750,000; the corporate lifetime cap, from $1 million to $2 million.

— The period allowed for reinvestment of the excluded capital gains is increased from 60 to 180 days.

— Investors can exclude 60 per cent of their gains in return for a minimum five-year investment in an SSBIC.

Jefferson's legislative proposal also permits a tax-free conversion of an SSBICS into a partnership or regulated investment company.

Since its inception almost 30 years ago as the only federal program aimed at addressing the capital gap faced by small disadvantaged businesses, the SSBIC program has invested more than $1.8 billion in disadvantaged businesses, or about $65 million a year.

In contrast, Jefferson noted that the current incentives allowed SSBICs to double annual investment in 1996 to more than $134 million for a variety of industries, ranging from computer technology and health care to franchises, retail outlets and telecommunications.

-30-

For more information, contact: Mr. Jean LaPlace at 202/225-6636.

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.

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS
(IN LOW AND MODERATE INCOME ZONES)

1	CA	$ 16,692,152	28.31%
2	TX	$ 6,240,714	10.59%
3	NY	$ 4,685,472	7.95%
4	MA	$ 4,623,350	7.84%
5	FL	$ 2,785,327	4.72%
6	OH	$ 2,741,335	4.65%
7	KS	$ 2,296,370	3.90%
8	MD	$ 2,220,000	3.77%
9	PA	$ 1,950,000	3.31%
10	TN	$ 1,519,045	2.58%
11	HI	$ 1,411,111	2.39%
12	MO	$ 1,200,001	2.04%
13	LA	$ 1,200,000	2.04%
14	KY	$ 1,100,000	1.87%
15	UT	$ 1,030,858	1.75%
16	NH	$ 1,000,000	1.70%
17	NJ	$ 850,000	1.44%
18	VA	$ 800,000	1.36%
19	AZ	$ 780,880	1.32%
20	ND	$ 751,040	1.27%
21	CO	$ 573,448	0.97%
22	NC	$ 519,499	0.88%
23	MN	$ 500,000	0.85%
24	OK	$ 460,001	0.78%
25	CT	$ 400,000	0.68%
26	AL	$ 300,000	0.51%
27	IL	$ 176,220	0.30%
28	DC	$ 100,000	0.17%
29	OR	$ 49,032	0.08%
30	WA	1	0.00%
	TOTAL	**$ 58,955,856**	**100.00%**
TOTAL OF TOP FOUR STATES			**54.69%**

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS IN LMI ZONES

CITY	STATE		AMOUNT OF FINANCING	TYPE OF FINANCING	RURAL FINANCING
Birmingham	AL	$	300,000	Equity	
		$	**300,000**		
Tucson	AZ	$	187,580	Debt	
Phoenix	AZ	$	133,300	Debt	
Phoenix	AZ	$	460,000	Debt	
	AZ	**$**	**780,880**		
Campbell	CA	$	103,000	Debt	
Campbell	CA	$	639,999	Equity	
Irvine	CA	$	500,000	Equity	
Los Angeles	CA	$	200,350	Debt	
Los Angeles	CA	$	474,764	Debt	
Menlo Park	CA	$	845,500	Equity	
Mountain View	CA	$	30,000	Debt	
Mountain View	CA	$	32,000	Debt	
Mountain View	CA	$	250,000	Debt	
Mountain View	CA	$	600,000	Equity	
Mountain View	CA	$	984,275	Equity	
Oakland	CA	$	7,365	Debt	
Orange County	CA	$	499,999	Equity	
Palo Alto	CA	$	500,000	Equity	
Palo Alto	CA	$	680,000	Equity	
Redwood City	CA	$	475,000	Equity	
Sacramento	CA	$	100	Equity	
San Diego	CA	$	500,000	Equity	
San Francisco	CA	$	150,000	Equity	
San Francisco	CA	$	250,000	Debt	
San Francisco	CA	$	1,000,000	Equity	
San Jose	CA	$	50,001	Equity	
San Jose	CA	$	100,000	Equity	
San Jose	CA	$	200,000	Equity	
San Jose	CA	$	275,000	Equity	
San Jose	CA	$	300,000	Debt	
San Jose	CA	$	483,000	Equity	
San Jose	CA	$	750,001	Equity	
Santa Ana	CA	$	800,000	Debt	
Santa Barbara	CA	$	210,000	Equity	
Santa Clara	CA	$	150,000	Debt	
Santa Clara	CA	$	176,693	Equity	
Santa Clara	CA	$	300,000	Debt	
Santa Clara	CA	$	412,284	Equity	
Santa Clara	CA	$	425,320	Equity	
Santa Clara	CA	$	487,500	Equity	
Santa Clara	CA	$	750,000	Equity	
Santa Clara	CA	$	1,000,000	Debt	
Sunnyvale	CA	$	400,000	Equity	
Sunnyvale	CA	$	700,000	Equity	
		$	**16,692,151**		

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS IN LMI ZONES

CITY	STATE		AMOUNT OF FINANCING	TYPE OF FINANCING	RURAL FINANCING
Boulder	CO	$	140,643	Equity	
Boulder	CO	$	432,805	Equity	
		$	**573,448**		
West Haven	CT	$	200,000	Debt	
West Haven	CT	$	200,000	Debt	
		$	**400,000**		
Washington DC	DC	$	100,000	Debt	
		$	**100,000**		
Ft. Lauderdale	FL	$	200,000	Debt	
Jacksonville	FL	$	159,378	Equity	
Jacksonville	FL	$	194,377	Equity	
Jacksonville	FL	$	717,199	Equity	
Melbourne	FL	$	400,000	Equity	
Ocala	FL	$	50,000	Debt	
Orlando	FL	$	750,000	Equity	
Sarasota	FL	$	100,000	Debt	
Tampa	FL	$	214,373	Debt	
		$	**2,785,327**		
Honolulu	HI	$	111,111	Debt	
Honolulu	HI	$	300,000	Debt	
Honolulu	HI	$	1,000,000	Debt	
		$	**1,411,111**		
Harrisburg	IL	$	43,900	Debt	
Chicago	IL	$	132,320	Equity	
		$	**176,220**		
Kansas City	KS	$	496,330	Debt	
Kansas City	KS	$	600,000	Debt	
Kansas City	KS	$	600,000	Debt	
Kansas City	KS	$	600,040	Debt	
		$	**2,296,370**		
Louisville	KY	$	500,000	Debt	
Louisville	KY	$	600,000	Debt	
		$	**1,100,000**		
New Orleans	LA	$	200,000	Equity	
New Orleans	LA	$	1,000,000	Debt	
		$	**1,200,000**		

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS IN LMI ZONES

CITY	STATE	AMOUNT OF FINANCING		TYPE OF FINANCING	RURAL FINANCING
Boston	MA	$	119,725	Debt	
Boston	MA	$	240,000	Equity	
Boston	MA	$	246,644	Debt	
Boston	MA	$	250,000	Equity	
Boston	MA	$	260,001	Equity	
Boston	MA	$	378,511	Debt	
Boston	MA	$	401,331	Equity	
Boston	MA	$	927,138	Equity	
Boston	MA	$	1,000,000	Equity	
Somerville	MA	$	50,000	Debt	
Worcester	MA	$	750,000	Equity	
		$	**4,623,350**		
Baltimore	MD	$	200,000	Debt	
Baltimore	MD	$	670,000	Debt	
Baltimore	MD	$	850,000	Equity	
North Bethesda	MD	$	500,000	Equity	
		$	**2,220,000**		
Rochester	MN	$	500,000	Equity	
		$	**500,000**		
Kansas City	MO	$	700,000	Debt	
St. Louis	MO	$	500,001	Equity	
		$	**1,200,001**		
Charlotte	NC	$	100,000	Equity	
Durham	NC	$	100,000	Equity	
Ralleigh	NC	$	319,499	Equity	
		$	**519,499**		
Fargo	ND	$	105,280	Debt	
Fargo	ND	$	131,040	Debt	
Fargo	ND	$	200,000	Debt	
Fargo	ND	$	314,720	Debt	
		$	**751,040**		
Manchester	NH	$	1,000,000	Eqity	
		$	**1,000,000**		
East Rutherford	NJ	$	850,000	Equity	
		$	**850,000**		

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS IN LMI ZONES

CITY	STATE	AMOUNT OF FINANCING	TYPE OF FINANCING	RURAL FINANCING
Bronx	NY	$ 750,000	Debt	
Hempstead	NY	$ 500,000	Debt	
Ithaca	NY	$ 500,000	Debt	
New York	NY	$ 82,500	Equity	
New York	NY	$ 182,972	Debt	
New York	NY	$ 650,000	Debt	
New York	NY	$ 500,000	Debt	
New York	NY	$ 650,000	Debt	
New York	NY	$ 820,000	Equity	
Rochester	NY	$ 50,000	Debt	
		$ 4,685,472		
Cleveland	OH	$ 735,334	Debt	
Dayton	OH	$ 52,000	Debt	
Dayton	OH	$ 234,000	Debt	
Dayton	OH	$ 250,000	Debt	
Dayton	OH	$ 870,001	Debt	
Youngstown	OH	$ 300,000	Debt	
Youngstown	OH	$ 300,000	Debt	
		$ 2,741,335		
Oklahoma City	OK	$ 210,001	Debt	
Oklahoma City	OK	$ 250,000	Debt	
		$ 460,001		
Portland	OR	$ 49,032	Equity	
		$ 49,032		
Philadelphia	PA	$ 900,000	Equity	
Pittsburgh	PA	$ 750,000	Equity	
Upper Darby	PA	$ 300,000	Debt	
		$ 1,950,000		
Memphis	TN	$ 105,000	Equity	
Nashville	TN	$ 764,045	Equity	
Springfield	TN	$ 650,000	Debt	
		$ 1,519,045		
Arlington	TX	$ 20,000	Debt	
Austin	TX	$ 450,000	Equity	
Barry	TX	$ 335,706	Equity	$ 335,706
Dallas	TX	$ 260,000	Debt	
Dallas	TX	$ 740,000	Debt	
El Paso	TX	$ 476,777	Debt	
Houston	TX	$ 399,000	Equity	
Houston	TX	$ 440,000	Debt	
Houston	TX	$ 600,000	Equity	

SBIC 1998 EQUITY AND NEAR-EQUITY INVESTMENTS OF $1 MM AND LESS IN LMI ZONES

CITY	STATE	AMOUNT OF FINANCING		TYPE OF FINANCING	RURAL FINANCING	
Houston	TX	$	750,000	Equity		
San Antonio	TX	$	1,000,000	Debt		
Smithville	TX	$	769,231	Debt	$	769,231
		$	**6,240,714**			
CITY	**STATE**	**AMOUNT OF FINANCING**		**TYPE OF FINANCING**	**RURAL FINANCING**	
Provo	UT	$	100,000	Debt		
SLC	UT	$	17,636	Equity		
SLC	UT	$	39,152	Equity		
SLC	UT	$	239,066	Debt		
SLC	UT	$	300,000	Equity		
SLC	UT	$	335,004	Equity		
		$	**1,030,858**			
Charlottesville	VA	$	800,000	Equity		
		$	**800,000**			
Seattle	WA	**$**	**1**	Equity		
	TOTAL INVESTMENTS	**$**	**58,955,856**			
	TOTAL RURAL INVESTMENTS	**$**	**1,104,937**			

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STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS (Senate - August 05, 1999)

NEW MARKETS TAX CREDIT

Mr. ROCKEFELLER. Mr. President, I rise today to introduce a new tool, the `New Markets Tax Credit,' to be used to expand economic development opportunities in low-income communities in West Virginia and across this country. I'm very pleased that my good friends, Senator **Robb, Sarbanes, Kennedy,** and **Kerry,** are joining me in this effort.

Despite the unprecedented period of expansion of the U.S. economy, many urban and rural areas continue to be held back by stubborn problems such as high unemployment and underemployment, insufficient affordable housing, shortages of services such as day care and shopping centers, and perhaps most importantly, by a chronic shortage of the private investment capital needed to stimulate and support community development.

For example, in West Virginia, we have counties where the official unemployment rate is as high as 14%. Counties like Mingo, McDowell, Logan and Boone have seen devastating job losses in the past two decades. For these rural communities, the nation's current economic boom is a distant echo. It's not that these people do not want to work, or that the entrepreneurial spirit is lacking. A major factor is the lack of private sector equity investment for business growth.

I have been pursuing economic development opportunities for my state for over 30 years, and perhaps the largest problem I've encountered is the lack of venture capital. America's most depressed economic areas desperately need private investment. They get very little not only because they are unattractive, but also because of misperceptions and market failures. A lack of information, for instance, means that many companies may have an exaggerated idea of the risk of investing in deprived areas, and often have no idea of potential markets. Yes, it is true that private venture capital investment rose 24% in 1998, 76% of the total went to technology-based companies--primarily in California's Silicon Valley and New England's high-tech corridors. But only 5.7% of all venture capital in 1998 went to South Central, Southwest and Northwest regions combined. Obviously, this is a huge disparity that needs to be corrected.

The New Markets Tax Credit is designed to encourage $6 billion in private sector equity investment for business growth in low and moderate income rural and urban communities. It would do that by providing tax credits for investments of $1.2 billion annually. The investments would be made by banks, foundations, companies or individuals. These investors would acquire stock or other equity interests in selected community economic development entities whose primary mission is serving distressed communities. Urban and rural communities with high poverty and low median income would be targeted.

The tax credits would be issued by the U.S. Department of Treasury to the selected entities. These entities in turn would sell or syndicate the credit to investors. The tax credit ultimately delivered to the investor would be in the amount of 6 percent annually of the amount of the investment, for an approximate aggregate value to the investor of 25 percent of the `present value' of the original investment over the 7 years. A `qualified investment' by an investor would be a cash purchase of stock or other equity in a selected entity, which must be held for at least 7 years. Substantially all of the investment would be required to be used by the community economic development entity to make `qualified low-income community investments,' which would be equity investments in, or loans to, qualified active businesses in the low-income communities.

The goal of this tax credit will be to encourage private investors who may have never considered investing in high-risk areas to do so. By investing in the community through local businesses private investors can explore new markets and improve the quality of life for the people in the area. Community development organizations may use the funds from private investors to develop micro-enterprise, manufacturing businesses, commercial facilities, communities facilities, like child care facilities and senior centers and co-operatives. It has the potential to encourage $6 billion in venture capital to these high-risk areas. And because community development vehicles may not redeem the equity interest for at least seven years, capital stays in the community. The New Markets Tax Credit will create new relationships between investors, community development vehicles, and small businesses, which will foster continued support and lasting investment.

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TO:

LISA GREEN

FROM:

TED WARTELL

NOTE:

For Wednesday's Michael Day Meet.

P.S. Remind me to order some more official looking FAX cover sheets.

Ted

U.S. Small Business Administration

SBA

Fax Transmission Cover Sheet

The U.S. Small Business Administration offers opportunities for all Americans to start, build and grow their own businesses into the 21st century.

To: Lisa Green

Organization: NEC

Phone: 456-2803 Fax: 456-2223

Date: 9/21/99 Time:

Number of Pages (including this page): 11

From: Elizabeth O. Kim, Assistant General Counsel

Office: Office of General Counsel

Phone: (202) 205-6440 Fax: (202) 205-6848

Message:

Introductory remarks in CR on NMVC legislation (Senate)

Note: Be aware fax machines using thermal paper produce an unstable image which will deteriorate. Copy messages onto plain paper prior to filing as a record!

Did you know that in fiscal year 1998 the SBA –

- maintained a guaranteed loan portfolio of more than $40 billion in loans to 491,000 small businesses that otherwise would not have had such access to capital?
- backed more than 47,100 loans totaling a record $10.8 billion to America's small businesses?
- made a record 3,456 investments worth $3.24 billion through its venture capital program?
- provided more than 30,000 loans totaling over $728 million to disaster victims for residential, personal-property and business loans?
- extended management and technical assistance to nearly 830,000 small businesses through its 12,400 Service Corps of Retired Executive volunteers and 1,000 small business development center locations?
- helped 6,000 small disadvantaged businesses obtain $5.9 billion in federal contracts?
-

[illegible]

Did you know that America's 23 million small businesses –

- employ more than 50 percent of the private workforce.
- generate more than half of the nation's gross domestic product, and
- are the principal source of new jobs?

Call us at 1-800-U-ASK-SBA
or visit our website at www.sba.gov

Congressional Record
September 16, 1999

By Mr. KERRY (for himself, Mr. Wellstone, Mr. Bingaman, Mr. Sarbanes, Mr. Levin and Mr. Cleland):

S. 1594

A bill to amend the Small Business Act and Small Business Investment Act of 1958; to the Committee on Small Business. community development and venture capital act of 1999

Mr. KERRY. Mr. President, the bill that I am sending to the desk is the Community Development and Venture Capital Act of 1999. I am pleased to share the introduction of this with Senators Wellstone, Bingaman, Sarbanes, Levin, and Cleland as cosponsors of it. This small business legislation is designed to promote economic development, business investment, productive wealth, and stable jobs in new markets.

It establishes a New Markets Venture Capital program that is part of President Clinton's New Markets Initiative that he mentioned in the ``State of the Union Address'' and promoted on a 4-day tour this summer.

New Markets are our country's low- and moderate-income communities where there is little to no sustained economic activity but many overlooked business opportunities. According to Michael Porter, a respected business analyst who has written extensively on competitiveness, ``. . . inner

[[Page S11055]]

cities are the largest underserved market in America, with many tens of billions of dollars of unmet consumer and business demand.'' Many rural areas also contain low- and moderate-income communities.

Think of the inner-city areas of Boston's Roxbury or New York's East Harlem, or the rural desolation of Kentucky's Appalachia or Mississippi's Delta region. These are our neediest communities--urban and rural pockets that are so depleted that no internal resource exists to jump start the economy. These are places where there have been multi-generations of unemployment and abandoned commercial centers and main streets.

To get at this complex and deep-rooted economic problem, this legislation has three parts: a venture capital program to funnel investment money into our poorest communities, a program to expand the number of venture capital firms that are devoted to investing in such communities, and a mentoring program to link established, successful businesses with businesses and entrepreneurs in stagnant or deteriorating communities in order to facilitate the learning curve.

The center piece is the New Markets Venture Capital Program. Its purpose is to stimulate economic development through public-private partnerships that invest venture capital in smaller businesses that are located in impoverished rural and urban areas or that employ low-income people.

Both innovative and fiscally sound, this legislation creates a new venture capital program within the Small Business Administration that is built on two of the agency's most popular programs. It is financially structured similar to the Agency's successful Small Business

Investment Company program, and incorporates a technical assistance component similar to that successfully used in SBA's microloan program.

However, unlike the SBIC program which focuses solely on small businesses with high-growth potential and claims successes such as Staples and Calloway Golf, the New Markets Venture Capital program will focus on smaller businesses that show promise of financial and social returns--what we call a ``double bottomline." These businesses tend to be higher risk, need longer periods to pay back money, need intensive, ongoing financial, management and marketing assistance, and have more modest prospects for return on investment than SBIC investments. For example, the returns on investments typically range from five to ten percent for community development venture capital funds versus SBIC's expected 20 to 30 percent rates of returns.

To balance out the equation, they also provide quality, stable jobs, create productive wealth in and among our neediest communities and need a smaller equity investment. Equity investments for community development investment funds will range from $50,000 to $300,000 versus the $300,000 to $5 million of typical deal sizes in the Agency's SBIC program.

Among other conditions, in order for an organization to be eligible to participate and approved as a New Markets Venture Capital company, it must have a management team with experience in community development financing or venture capital financing, be able to raise at least $5 million of non-SBA money for debentures, and raise matching funds for SBA's technical assistance grants.

Community development venture capitalists, we should be reminded, use all the discipline of traditional venture capitalists.

At the Small Business Committee roundtable we held in May on the Agency's SBIC program and other venture capital proposals, community development venture capital groups from Massachusetts to Minnesota to Kentucky talked about profit. Like traditional venture capital funds, community development funds have to make prudent investments to earn profits in order to attract and keep investors. But they balance that with social objectives. One of the most important social goals for Boston Community Venture Fund is job creation and job quality.

Elyse Cherry, who is President of the Boston Community Venture Fund, invited me, former Treasury Secretary Robert E. Rubin and former Congressman Joseph P. Kennedy II and others to tour a company her Fund invested in called City Fresh Foods. Located in Roxbury, one of Boston's neediest neighborhoods, Glynn and Sheldon Lloyd started a company that manufactures prepares African-American and Hispanic meals for the community and corporate clients. And through the Meals-on-Wheels program, this company serves the elderly in Roxbury and Dorchester districts. In addition to providing a needed service, City Fresh Foods has created 20 jobs, hires from the community, pays its employees from $8 to $16 per hour, and offers training and opportunity for them to move from entry-level jobs to supervisory positions.

There are more success stories like this around the country. The Community Development Venture Capital funds across the country have a proven track record in making smart, responsible investments in small businesses in their communities, but the capital needs of firms in economically distressed areas far outweigh the existing capacity of these organizations. Compared to the more than 1,143 traditional and SBIC venture capital firms in the U.S., only some 40 funds nationwide concentrate on investing in companies that show promise of financial and social returns. We simply need more community development venture capital funds to reach more of these underserved communities.

The second component of this bill, the ``Community Development Venture Capital Assistance Program," recognizes that need and is designed to increase the number and expertise of community development venture capital funds, such as New Markets Venture Capital companies, around the country. A Community Development Venture Capital organization has a primary mission of promoting community development in low-income communities through investment in private businesses.

Senator Wellstone has carried the water on community development venture capital concept and deserves special credit for educating the Small Business Committee about this important economic development tool. He introduced this initiative in March. It is virtually identical to the bill he introduced in the last Congress and passed the full Senate as part of a comprehensive small business bill, H.R. 3412.

First, the Community Development Venture Capital Assistance program would authorize $15 million for SBA grants to private, nonprofit organizations with expertise in making venture capital investments in poor communities. These organizations would use these grants to provide hands-on technical assistance to spawn and develop new and emerging CDVC or NMVC companies. The intermediary organizations would match the grants dollar-for-dollar with non-Federal sources.

Second, this program would provide $5 million in SBA grants to colleges, universities, and other firms or organizations--public or private--to create and operate training and intern programs, organize a national conference, and fund academic research and studies dealing with community development venture capital.

Finally, to complement the venture capital investments and the program to foster the emergence and growth of more community development venture capital companies, this legislation would build on the BusinessLINC grant program. Already a successful public-private partnership that the SBA and Department of Treasury launched last June, it encourages larger businesses to mentor smaller businesses, enhancing the economic vitality and competitive capacity of small businesses located in the targeted areas. This Act will authorize $3 million a year to further promote and expand this program.

It's easy to stare past the broken inner cities and boarded up rural towns to the intrigues and fantasies of a booming Wall Street, flourishing suburbs and record-low national unemployment. But as we trumpet the successes of our economy, we must be smart and leverage that prosperity to jumpstart and strengthen our communities that are struggling. This legislation aims to do just that.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KERRY. Mr. President, I ask unanimous consent that letters of support be printed in the Record.

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There being no objection, the letters were ordered to be printed in the Record, as follows:

Boston Community Capital
Boston, MA
July 16, 1999

Hon. John F. Kerry, Ranking Member
Committee on Small Business
U.S. Senate
Washington, DC

Dear Senator Kerry:

I am writing to you as president of Boston Community Venture Fund, an affiliate of Boston Community Capital, and as a Board Member of the Community Development Venture Capital Alliance (CDVCA), in strong support of your leadership regarding the Administration's New Markets Venture Capital legislative proposal. I appreciate your positive public remarks concerning New Markets, including at your Committee's recent ``roundtable." It is my understanding that you plan to introduce the administration's proposal soon, and I will be extremely pleased and proud to have you as our leading advocate in the Senate. CDVCA has worked closely with the Small Business Administration as they have drafted their proposal, and I have enjoyed working with Patty Forbes of your Small Business Committee staff, as well.

As you know, a New Markets Venture Capital program would help to direct private, equity financing to small, high- potential growth firms in economically distressed urban and rural areas. As the nation's leading practitioners of community development venture capitalism, the Alliance and its member organizations have begun to establish a strong record of effectively promoting such investment through what we call social entrepreneurship--equity investing with a ``double bottom-line" mission of creating jobs and wealth among economically disadvantaged populations.

CDVCA strongly supported the Senate's action last year in passing community development venture capital ``capacity- building" legislation. Unfortunately, that effort, initiated by Senator Wellstone, did not pass in the House before the end of the last Congress. We continue to believe that capacity-building assistance for the community development venture capital field would be crucial to the success of a New Markets program at SBA. We urge you to consider adding a provision to incorporate this capacity-building, or ``Wellstone," concept into any bill you might introduce.

CDVCA also believes that a New Markets Venture Capital program could be more workably and effectively targeted if the Administration's discussion draft were modified. CDVCA's member-organizations all have a primary mission of serving low-income people. Indeed, we would prefer that such a mission be a requirement for eligibility for applicants to become New Markets Venture Capital companies in the bill. However, even as our organizations pursue that mission, none of our member-funds restricts itself to investing within geographical bounds as narrow as those suggested by the Administration. Serious pockets of poverty exist outside the census tracts which are the primary basis for that Administration proposal's geographical targeting. We have provided your staff with suggestions for amending that provision, and we would appreciate it if you could consider such changes before introducing a bill.

We strongly support the Administration's proposal, and we are especially hopeful regarding its prospects for enactment following the President's important recent tour of low-income urban and rural communities. I look forward to continuing to work with you and your office, and I hope you will feel free to contact me or Bob Rapoza, who represents our Alliance in Washington, should you have any questions. Bob's number is 292-393-5225.

Thank you for your attention to this issue. I hope to be discussing it further with you in the very near future.

Sincerely,
Elyse D. Cherry, President
Boston Community Venture Fund.

September 15, 1999.

Dear Members of Congress:

We urge you to support the President's proposal for a "New Markets Venture Capital Companies" program to be administered by the Small Business Administration. The program would help establish 10-20 new venture capital investment funds with a mission of creating good jobs and new businesses in economically distressed communities across America.

The remarkable prosperity now enjoyed by much of the country unfortunately is leaving large numbers of Americans behind. One reason is lack in many urban and rural communities of the needed equity capital and technical assistance which are key to starting and expanding new businesses.

An emerging industry of community development venture capitalists is addressing this need. Committed to a "double bottom-line" of rigorously promoting profit-making growth companies while also creating large numbers of good jobs in low-income communities, these funds have demonstrated impressive results. The same model of business development that has driven economic expansion in the Silicon Valley and Route 128 in Massachusetts, coupled with a focus on poor communities and job creation, is beginning to make a powerful difference in areas such as rural Appalachia, Minnesota's Iron Range, inner-city Baltimore, Boston and elsewhere.

We need to build on the success of this grassroots model to help ensure that all of America's communities have a chance to participate in current growth. A modest public investment, leveraging significant private capital, would yield tremendous national benefits.

The Administration's proposal is contained in the President's FY 2000 budget request. Bills to be introduced by Senator John Kerry and Representative Nydia Velazquez, the Ranking Members of their respective Small Business Committees, faithfully embody the same concept. We are very hopeful that this idea, grounded in local self-help principles and targeted to where it is most needed, can be enacted as a bipartisan legislative accomplishment.

A New Markets Venture Capital program would allow participating funds to issue SBA-guaranteed debentures for urgently needed equity capital and to receive matching technical assistance grants to allow the intensive, hands-on management and direction which is key to the success of community development venture capital. A $45-million Federal investment would match other sources on a dollar-for-dollar basis and be directed over 10 years to generate hundreds of millions of dollars in economic activity.

All this would take place in communities that currently have the most trouble attracting private investment, despite numerous potential business opportunities with good returns and outstanding social benefits. Participation would be on a competitive basis and geared toward funds with a combination of a strong financial track record and a mission of community development. The program would be community-based to meet the specific needs of each area in which it operates.

Community development venture capital funds are proving that the tools of venture capital can fuel business creation and expansion, create good jobs and improve the lives of people in low-income communities. We hope you can give a boost to this extremely promising new tool for genuine economic development by supporting and passing New Markets Venture Capital legislation this year.

Sincerely,

African-American Venture Capital Fund, LLC, Louisville, KY
Alternatives Federal Credit Union, Ithaca, NY
Appalachian Center for Economic Networks, Athens, OH
Arkansas Enterprise Group, Arkadelphia, AR
Association for Enterprise Opportunity, Chicago, IL
Banc of America SBIC Corporation, Charlotte, NC
Bank One, Chicago, IL
Boston Community Capital, Boston, MA
Carras Community Investment, Inc, Fort Lauderdale, FL
Cascadia Revolving Fund, Seattle, WA
CDFI Coalition, Philadelphia, PA
CEI Ventures, Inc, Portland, ME
Center for Community Self-Help, Durham, NC
Commons Capital, Nantucket, MA
Community Loan Fund of Southwestern Pennsylvania, Inc, Pittsburgh, PA
Development Corporation of Austin, Austin, MN
DVCRF Ventures, Philadelphia, PA
Enterprise Corporation of the Delta, Jackson, MS
Enterprise Foundation, Columbia, MD
First Nations Development Institute, Fredericksburg, VA
Gulf South Capital, Inc, Jackson, MS
Illinois Facilities Fund, Chicago, IL
Impact Seven, Inc, Almena, WI
Intrust USA, Wilmington, DE
J.P. Morgan Community Development Corporation, New York, NY
Kentucky Highlands Investment Corporation, London, KY
Karen H. Lightman, Senior Policy Associate, Carnegie Mellon University Center for Economic Development, Pittsburgh, PA
Local Economic Assistance Program, Inc, Oakland, CA
LEAP, Inc, Brooklyn, NY
Millennium Fund, LLC, Seattle, WA
Minnesota Investment Network Corporation, Minneapolis MN
Mountain Ventures, Inc, London, KY
MSBDFA Management Group, Inc, Baltimore, MD
National Association of Affordable Housing Lenders, Washington, DC
National Community Capital Association, Philadelphia, PA
National Congress for Community Economic Development, Washington, DC
National Cooperative Bank Development Corporation, Washington, DC
National Council of LaRaza, Washington, DC
New York City Investment Fund, New York, NY
New York Community Investment Company L.L.C. New York, NY
Northern Community Investment Corporation, St. Johnsbury, VT
Northern Initiatives, Marquette, MI
Northeast Ventures Corporation, Duluth, MN
Pioneer Human Services, Seattle, WA
Resources for Human Development, Philadelphia, PA

The Roberts Enterprise Development Fund, San Francisco, CA
Rural Development & Finance Corp, San Antonio, TX

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Silicon Valley Community Ventures, San Francisco, CA
Southern Development Bank, Arkadelphia, AR
Southern Tier West Regional Planning and Development Board, Salamanca, NY
Sustainable Jobs Fund, Durham, NC
Woodstock Institute, Chicago, IL
Vermont Community Loan Fund, Inc, Montpelier, VT
Virgin Islands Capital Resources, Inc, St. Thomas, USVI

Northeast Ventures
Duluth, MN
September 16, 1999

Senator John F. Kerry
Small Business Committee/Democratic Staff
Washington, DC

Dear Senator Kerry:

I am writing in support of the New Markets Venture Capital bill, which I understand you are introducing today. I serve as chair and chief executive officer of Northeast Ventures, a $12 million community development venture capital firm investing in northeastern Minnesota, a restructured iron mining area of the country. Over the last ten years, we have invested almost $10 million in 21 growth companies which would not exist but for the presence of our equity capital We apply market disciplines along side a frankly stated social purpose of intervening in this distressed area.

I also serve as chair of the Community Development Venture Capital Alliance, a national alliance of community development venture capital funds. We have 40 funds throughout the United States and eastern Europe. All these funds have a mission of poverty alleviation through the disciplined use of venture capital in distressed areas and among distressed populations.

The New Markets Venture Capital legislation has the potential of providing significant additional funding and catalyzing the creation of a significant number of new funds for this important purpose.

We thank you very much for your support. Nothing could be more important than job and wealth creation in the most distressed urban and rural areas of our country.

Respectfully submitted,
Nick Smith, Chairman

Mr. SARBANES. Mr. President, we have spent a lot of time in the Senate praising the booming American economy and low unemployment rates. I, like the rest of the colleagues, am proud to see our country benefitting from such prosperity, but all Americans are not participating in these benefits.

In reality, Americans that live in low income areas, either in cities or rural areas, are not experiencing today's prosperity. This is largely because they do not have the economic infrastructure in their communities to take advantage of it. Poor communities frequently lack local businesses to employ residents and provide services, creating no point of entrance for participation in the larger American economy.

It is for these reasons that I am co-sponsoring the Community Development and Venture Capital Act of 1999 introduced by Senator Kerry. This legislation is part of President Clinton's New market Initiatives Proposal. As my colleagues know, I have already introduced America's Private Investment Companies Act of 1999, or APIC, which is another part of the New Market initiative.

The Community Development and Venture Capital Act makes a three pronged effort to infuse capital into distressed communities, and establish small businesses in our nations most needy neighborhoods. First, the bill will use federal money to leverage private funding for venture capital companies with a commitment to community development, referred to as New market Venture Capital Companies (NMVC). This will help to nurture new businesses in poor areas. The companies funding by this bill will function much like the successful SBIC program that the Small Business Administration sponsors, but will focus on businesses in targeted neighborhoods that need more patient, long term capital funding, and added technical assistance to ensure success

Furthermore, the bill will increase the number of community development venture capital funds so that more communities can be served by the program and expand the successful business mentoring program, BusinessLINC, already in place.

I have long argued that the best social policy is a job. This legislation, combined with the APIC bill and the New Markets Tax Credit introduced by Senator Rockefeller, will be a catalyst to the creation of new businesses and the jobs and economic opportunities they bring in those areas most in need.

THE COMMUNITY DEVELOPMENT AND VENTURE CAPITAL ACT OF 1999

Mr. WELLSTONE. Mr. President, I speak today in support of the Community Development and Venture Capital Act of 1999 introduced today by Senator Kerry. I am proud to be an original cosponsor of this measure which, if enacted, will make a real difference in the growth of small business, and the creation of quality jobs, in underdeveloped areas around the country.

I think the critical issue in communities which experience enduring poverty is job creation through promotion of business opportunities and entrepreneurship. This has been my experience when I have traveled to places like rural Appalachia, inner city Minneapolis or Chicago or the Iron Range in Minnesota. I also believe that an area can be made as pro-business as possible though tax policies and zoning ordinances, but at some point businesses simply need capital so that they can grow and create good jobs.

No business can grow without infusions of capital for equipment purchases, to conduct research, to expand capacity, or to build infrastructure. At some point all successful ventures outgrow incubation in the entrepreneur's garage or living room; additional staff must be hired and the complexity of managing supply and demand increases. Yet it is clear that throughout the country there are small business owners who are being starved of the capital necessary to take this step. They have viable businesses or ideas for businesses but cannot fully transform their aspirations into reality because of this financial roadblock.

Businesses can secure capital through loans, but there is a limit to the amount of debt that a business can safely carry and lenders are wary of businesses with low equity. Equity investment also differs from lending in that the equity investor acquires an ownership stake in the business. The fortunes of the investor rise and fall with the success of the venture. This means making an equity investment is riskier than making a loan, and it also means that the investor has a greater vested interest in promoting healthy growth. Investment of equity capital into an enterprise has a multiplier effect in that it allows the business owner to access necessary credit.

Traditional venture capital firms are not meeting the need for equity capital in disadvantaged communities. In addition, the Small Business Administration's Small Business Investment Companies program--with a few exceptions--has not reached into the most economically backward communities in the country. Such investments are risky in the best of circumstances, but they can and do succeed with adequate time and attention. These communities need patient investors who are willing to work closely with small business owners to realize a financial return over the long term. Often, the investments needed are smaller than those made by traditional sources.

There is no question that the lack of access to equity capital in disadvantaged areas around the country is a prime reason why those communities have been left behind by the historic economic expansion that the rest of the nation has enjoyed. But there are success stories in many states which I

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believe that we can emulate and build on to allow distressed communities to reach their full potential.

Throughout America, organizations known as Community Development Venture Capital funds are making these kinds of equity investments in communities and are producing excellent results. CDVC funds make equity investments in small businesses for two purposes: to reap a financial return to the fund, and to generate a social benefit for the community through creation of well paying jobs. This ``double bottom line" is what makes CDVC funds unique. There are around 40 CDVC funds currently operating throughout the country, in both rural and urban areas. These funds are demonstrating the success of socially conscious investment and entrepreneurial solutions to social and economic problems.

My own state of Minnesota is home to a good example of a seasoned, and successful CDVC fund: Northeast Ventures Corporation of Duluth. NEV serves a seven country rural area and focuses on creating good jobs in high value-added industries. NEV targets 50% of the jobs created through investments to women, and to low-income and structurally unemployed persons.

In 1990 a group a entrepreneurs approached Northeast Ventures about setting up a car wash equipment manufacturing facility in Tower, a town of 508 people, in one of the poorest parts of northeastern Minnesota. While NEV thought that the market opportunity was attractive, the company, called Powerain, had an incomplete business plan and lacked a Chief Operating Officer. NEV also felt that the business provided a good opportunity to create jobs and bring some economic vitality to an area that needed it badly.

Other assistance was needed before NEV could provide financing for the effort. Northeast worked closely with Powerain's founders to revise the business plan and identify a strong CEO candidate for the company. Northeast also invested $200,000 in equity into the business.

NEV staff conducted the strategic planning sessions of Powerain and continue to be essential in developing the company's strategic plan. They assist in identifying the need for key personnel; recruit the necessary staff; and are integral in qualifying the short list of candidates. Over a multi-year period, NEV has talked daily with the Powerain CEO regarding subjects as diverse as sales, distributor relationships and the financial structure of loans. Over an eight year period, NEV has assisted Powerain in all subsequent rounds of financing totaling $826,932

Powerain had a record sales year in 1998 and is expecting another record year in 1999. The company currently employs 20 full-time people, and expects to increase that number significantly in the future. The company provides ongoing training to its staff and entry level positions begin at $8 an hour--with full benefits. Most employees earn well in excess of $10 per hour.

The Community Development and Venture Capital Act of 1999 is designed to build on the successful CDVC model by promoting equity investment in economically distressed communities. The first title of this legislation would create the New Market Venture Capital Companies Program, a new program within SBA that will fund at least ten venture capital companies dedicated to new markets--low- and moderate-income communities. $15 million in annual appropriations would support a $100 million program level for SBA-guaranteed debentures, and $30 million in matching technical assistance grants.

Title II of the bill basically consists of legislation I introduced last year, and again this year, entitled the Community Development Venture Capital Assistance Act. Last year, the Senate passed this legislation as part of a SBA technical amendments bill. This title is intended to build the capacity of the existing CDVC industry through technical assistance and SBA grants to colleges, universities, and other firms or organizations--public or private--to create and operate training programs, intern programs, a national conference, and academic research and study dealing with community development venture capital.

Title III would build on the BusinessLINC grant program which is a public-private partnership that the SBA and Department of Treasury launched last June. It encourages larger businesses to mentor smaller businesses, promoting the viability of small businesses located in disadvantaged areas.

I think this legislation speaks to the heart of reversing persistent poverty in America by promoting entrepreneurship, and encouraging responsible equity investment. The small business growth sparked by this legislation would in turn create jobs and wealth in those communities which have heretofore been overlooked. It is an absolutely essential addition to the SBA's current program offerings and I urge my colleagues to support it.

Tax Credit

July 22, 1999

New Markets Tax Credit Issues

The New Markets Tax Credit (NMTC) is an extremely promising concept, but experience with low-income community development investments over the last dozen years instructs that refinements to the draft legislation are necessary for successful implementation. All section and page references are to the Rangel draft bill.

Term of Credit -- Sec 45D(a)(2) – p. 2. As currently drafted, the NMTC is too modest an incentive to make a decisive difference in the feasibility of economic development investments in distressed urban and rural communities. The credit base, term, and percent are all much smaller than those for the Low Income Housing Credit, and (unlike the Housing Credit) the investor's basis is reduced by the NMTC amount. Moreover, investors perceive economic development as far riskier than housing. A longer credit period would increase the power of the Credit to attract the long-term low-cost capital that economic development requires. Recommendation: The credit period should be expanded to permit up to 10 years of credits.

Bridge Financing Precluded – Sec. 45D(b)(1) – p. 3. An important and common practice in the Low Income Housing Tax Credit is for investors to pay a portion of their investment up front and sign promissory notes to pay the remainder over several years. The investment underwriter then obtains a commercial "bridge loan" by assigning these promissory notes to the bridge lender. This structure enables investment underwriters to increase the efficiency of the tax incentive, maximize the funds available for immediate investment, and provide a market yield to investors. There is no potential for abuse because the cash proceeds of the bridge loan are used to fund the housing. The same technique should be available in connection with the NMTC. However, Sec. 45(b)(1)(A) appears to preclude this technique by requiring that a qualified investment be acquired "solely in exchange for cash". Recommendation: Change this language to "solely in exchange for cash *or an unconditional commitment to pay cash.*." In Sec. 45D(b)(1)(B), the word "cash" should similarly be changed. The requirement that the funds must be invested in qualified activities is sufficient to prevent any abuse.

Investment-Related Costs – Sec. 45D(d) – p. 6. Community development entities ("CDEs") will need to retain a reasonable portion of the investment proceeds for cash flow and loss mitigation reserves and to pay reasonable salary and other overhead costs. Investors will reasonably require that funds to cover such investment related costs be set aside in order to assure prudent management over the entire investment period. It is critical that such funds not be excluded from the credit base or, worse still, that an investment is disqualified because the requirement at Sec. 45D(b)(1)(B) that "substantially all" of the investment is used to make qualified investments cannot be met. Recommendation: The term "qualified low-income community investments" [Sec. 45D(d)] should include funds held for reserves or management expenses in connection with any other such investment under subparagraphs (A), (B), (C), or (D).

Participation of Limited Liability Companies – Sec. 45D(b)(6)(B) – p. 4. Limited liability companies are neither corporations nor partnerships, but should be included as eligible investment vehicles. Recommendation: The term "equity investment" should be amended to include "any capital interest in a qualified community development entity which is a partnership *or limited liability company.*"

Entities Controlled by Qualified CDEs – Sec 45D(b)(3) – p. 4 and (c) – p. 5. Nonprofit CDEs cannot directly accept investments or use the tax credits. As such, nonprofit CDEs will generally set up entities they control (such as partnerships or LLCs) that can accept and manage investments and pass the tax credit through to the investors. However, the bill does not explicitly accommodate this approach. For example, it appears that the investment vehicle, and not the nonprofit that creates and controls it, would have to be certified as a CDE, which includes maintaining community accountability, and apply for the tax credits. Similarly, depending on the situation, it may be appropriate for the safe harbor for use of funds [Sec. 45D(b)(3)] to apply either to the nonprofit parent or the investment entity established to raise and manage NMTC investments. Recommendations: (1) In Sec 45D(c), a CDE should be permitted to establish an investment entity it controls, such as a partnership or LLC, to accept and manage investments. (2) In Sec. 45D(b)(3), the safe harbor should apply to the qualified CDE "or, at its election, an investment entity it controls".

Direct Development by CDEs – Sec. 45D(d) – p. 6. We understand that the NMTC is intended, among other things, to help CDEs develop and rent real property (except for rental housing). However, it does not appear that the bill accommodates this direct development role. Instead, the bill appears to accommodate only the investment by a CDE in an unrelated business, e.g., an unrelated real estate developer. Recommendation: The subsection on qualified low-income community investments should be clarified to permit CDEs to undertake direct development activities or business operations to the extent they would be permissible for unrelated qualified active low-income community businesses to undertake.

Preference for Experienced CDEs – Sec. 45D(f)(2) – p. 10. While an allocation preference for experienced CDEs may be appropriate, the bill limits the preference to business assistance experience. The NMTC is designed to stimulate both business assistance and real estate development, and many CDEs have real estate development experience in disadvantaged communities. The allocation preference should not favor business assistance over real estate development. Recommendation: The preference should go to CDEs with successful records of assisting "disadvantaged businesses *or communities.*"

Recapture Events – Sec. 45D(g)(3) – p. 12. The bill makes investors subject to recapture of the tax credits for actions outside their control. Only the CDE itself, and not the investors, can affect whether it ceases to be a qualified CDE and how the investment proceeds are used. Moreover, funds might continue to serve their intended purpose even if the CDE itself fails to maintain certification or even goes out of business. If such noncompliance can trigger recapture, the result will be to discourage many investors from investing and drive up the rates of return that other investors require to offset the risk of recapture. Recommendation: The bill should delete subparagraphs (A) and (B) and authorize the Secretary to take appropriate actions directly against a CDE that ceases to be a qualified CDE or ceases to use funds as required.

Basis Reduction – Sec. 45D(h) – p.13. The bill would reduce an investor's basis by the amount of the tax credit claimed. This will reduce the power of the NMTC as an investment incentive. The NMTC is already quite modest in size, and should be effectively diminished. The Low Income Housing Tax Credit does not reduce the investor's basis. Similarly, a noncorporate taxpayer can exclude 50 percent of any gain from the sale of exchange of qualified small business stock held for more than five years (Code Section 1202(a)). Recommendation: Delete subsection (h). Alternatively, phase out the basis reduction for investments held longer than five years, e.g., so that it phases out entirely by the end of ten years.

Other Federal Subsidies – Sec. 45d(i)(1) – p. 13. The bill authorizes the Secretary to limit the credit for investments, which are directly or indirectly subsidized by other Federal benefits. While we appreciate the desire to prevent "excessive" subsidy, we do not believe that reasonable regulations are possible. The presence of other subsidies plays only a modest role in whether an investment is "excessively" profitable. First, it will be impossible to determine with any precision just what would be a reasonable rate of return – and, hence, whether and what other subsidy will be appropriate. The answer will ultimately be determined by the market place. The nature of the specific investment will determine what types and amounts of other subsidies are appropriate. It is possible for a low-risk investment with no other subsidy to be "excessively profitable". It is equally possible for a high-risk investment with substantial other subsidies to generate the same rate of return and not be "excessively profitable." Second, the number of subsidies may less important than the total amount. Third, some activities may require additional subsidies to generate a target yield, and some high public benefit activities may require (and merit) greater subsidy. Fourth, CDEs must have the flexibility to assemble portfolios of investments, some of which may yield different rates of return and different subsidy mixes. Fifth, a prudent portfolio manager will plan for the likelihood that not every investment will perform as projected, and therefor project a higher yield than is promised to investors. Sixth, the market's acceptance may change over time; market yields on Housing Credit investments have dropped dramatically over the past several years. Finally, there are several ways of measuring rates of return, depending on the needs of the investor and the structure of the investment itself. In sum, it would be fruitless to attempt to regulate this matter. The result will only be to complicate further the already formidable challenge of low-income community economic development. Recommendation: This provision should be deleted.

Section 183 Applicability – not addressed in bill. It is important to set explicit policy that Section 183 (prohibiting the deduction of losses in connection with "hobbies" and other activities not engaged for profit) will not apply to NMTC investments. In the past there has been enormous confusion and disruption with respect to the applicability of

Section 183 to investments in connection with Low Income Housing Tax Credits and other targeted tax credits. It was ultimately decided not to apply Section 183 to Housing Credit investments because the Housing Credit's purpose is to stimulate investments that would otherwise be uneconomic. The same policy should apply to the NMTC. Recommendation: The bill should include language similar to Housing Credit regulations (Reg. 1.142-4), which states, " . . . section 183 does not apply to disallow losses, deductions, or credits attributable to the ownership and operation of the [section 42] building."

Central Business Districts – not addressed in the bill. In many cases, the central business district of major cities will be eligible for NMTC investments since, though they are primarily not residential areas, their few residents may well have low incomes. These central business districts are typically healthy, and sometimes thriving, regional business centers. They are generally not the distressed neighborhoods or isolated rural areas for which the NMTC is intended. Recommendation: The Secretary should be directed to identify central business districts where investments will not be eligible for NMTCs.

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October 6, 1999

Lisa Green
Senior Advisor
National Economic Council
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20050

Re: Comments on the New Market Tax Credit Initiatives

Dear Ms. ~~Green:~~ Lisa:

Thank you for attending the National Neighborhood Coalition's September Forum to discuss the President's New Markets Initiatives. The National Congress for Community Development (NCCED) helped put this forum together as part of our work as the nation's trade association for community-based nonprofit development organizations. NCCED recognizes the enormous economic potential in America's low-income inner city and rural communities. We are hopeful that New Markets Tax Credit legislation and related proposals can enable business growth and community empowerment in these untapped and underserved markets.

We appreciated your willingness to discuss these issues with nonprofit community groups and their representative associations. We believe that community involvement and the wisdom of community organizations will ensure that the President's commitment to low-income communities results in legislation that impacts targeted communities.

We were also pleased to hear you state that the New Markets Initiative will not replace the Administration's commitments to affordable housing, community reinvestment, or Enterprise Zone/ Empowerment Communities, or reduce any resources from existing programs.

At the meeting, you requested sites to highlight the investment potential in new markets as part of President Clinton's tour in November. As we work with the nation's 3,600 CDCs, we would be able to make recommendations in any community in the country. Some options could include: Bethel New Life in Chicago, IL; Appalachian Center for Entrepreneurial Networks in Athens, OH; PPEP in Tucson, AZ; Greater Germantown and Allegheny West in Philadelphia, PA; Neighborhood Housing Services in Fort Wayne, IN; Sacramento, CA; Saint Paul and Minneapolis, MN; Portland, OR; and the southern rural communities that joined together as part of a nine-state empowerment zone process.

NCCED believes that a few changes to the current legislation would increase the likelihood of a successful program: technical assistance, population and place, longer-terms, and a process for community involvement.

First, we recommend including a technical assistance component for the NMTC program. NCCED staff are some of the most knowledgeable about community revitalization tax credit programs in the country. We have learned that tax credits require a new mindset for both community groups and their corporate partners. Some training and technical assistance are both required to make these partnerships workable.

Second, we prefer the Senate bill that includes low-income segments of the population as eligible entities. We prefer this to the House version that only includes low-income census tracts.

Third, it is also important to note that a longer term for the credit may prove very important in promoting economic growth in low income communities. It is likely that the credit will be used in at least two important ways: real estate development and community development venture capital. For example, resources from the credit may used to finance a share of a grocery, day care facility or industrial building. Experience has shown that such projects need financing of ten years or longer. Similarly, working with someone with a good idea, starting a business from the ground up, will take a longer time. The Senate bill makes strides in this regard by setting the term of the credit at seven years. It is our recommendation that the term be set at ten years.

Finally, we encourage you to consider a long-term process for increasing the involvement of community groups in the organizing and implementing of this exciting new project. NCCED and our members want the New Market Initiatives to be an asset-building approach for community residents, not a dislocation strategy. In short, we do not want the aftermath of a New Markets Initiative to be the replacement of Uncle Willie's Barbecue with a Starbucks Coffee shop.

Thank you again for your hard work in ensuring that the nation's prosperity extends to all American communities.

Sincerely,

Roy O. Priest
President and CEO