

Union Calendar No. 166

106TH CONGRESS
1ST SESSION

H. R. 2614

[Report No. 106-278]

To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1999

Mr. TALENT (for himself, Ms. VELÁZQUEZ, Mrs. KELLY, Ms. MILLENDER-McDONALD, Mr. HILL of Montana, Mr. DAVIS of Illinois, Mrs. BONO, Mrs. JONES of Ohio, Ms. BERKLEY, Mrs. NAPOLITANO, Mr. PASCARELL, Mrs. McCARTHY of New York, Mr. SWEENEY, Mr. COMBEST, and Mr. DEMINT) introduced the following bill; which was referred to the Committee on Small Business

AUGUST 2, 1999

Additional sponsors: Mr. LOBIONDO, Mr. BAIRD, and Mr. UDALL of New Mexico

AUGUST 2, 1999

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Certified Development
5 Company Program Improvements Act of 1999”.

6 **SEC. 2. WOMEN-OWNED BUSINESSES.**

7 Section 501(d)(3)(C) of the Small Business Invest-
8 ment Act (15 U.S.C. 695(d)(3)(C)) is amended by insert-
9 ing before the comma “or women-owned business develop-
10 ment”.

11 **SEC. 3. MAXIMUM DEBENTURE SIZE.**

12 Section 502(2) of the Small Business Investment Act
13 of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

14 “(2) Loans made by the Administration under
15 this section shall be limited to \$1,000,000 for each
16 such identifiable small business concern, except
17 loans meeting the criteria specified in section
18 501(d)(3), which shall be limited to \$1,300,000 for
19 each such identifiable small business concern.”.

20 **SEC. 4. FEES.**

21 Section 503(f) of the Small Business Investment Act
22 of 1958 (15 U.S.C. 697(f)) is amended to read as follows:

23 “(f) EFFECTIVE DATE.—The fees authorized by sub-
24 sections (b) and (d) shall apply to financings approved by
25 the Administration on or after October 1, 1996, but shall

1 not apply to financings approved by the Administration
2 on or after October 1, 2003.”.

3 **SEC. 5. PREMIER CERTIFIED LENDERS PROGRAM.**

4 Section 217(b) of the Small Business Reauthoriza-
5 tion and Amendments Act of 1994 (relating to section 508
6 of the Small Business Investment Act) is repealed.

7 **SEC. 6. SALE OF CERTAIN DEFAULTED LOANS.**

8 Section 508 of the Small Business Investment Act
9 of 1958 (15 U.S.C. 697e) is amended—

10 (1) in subsection (a), by striking “On a pilot
11 program basis, the” and inserting “The”;

12 (2) by redesignating subsections (d) through (i)
13 as subsections (e) through (j), respectively;

14 (3) in subsection (f) (as redesignated by para-
15 graph (2)), by striking “subsection (f)” and insert-
16 ing “subsection (g)”;

17 (4) in subsection (h) (as redesignated by para-
18 graph (2)), by striking “subsection (f)” and insert-
19 ing “subsection (g)”;

20 (5) by inserting after subsection (e) the fol-
21 lowing:

22 “(d) SALE OF CERTAIN DEFAULTED LOANS.—

23 “(1) NOTICE.—If, upon default in repayment,
24 the Administration acquires a loan guaranteed under
25 this section and identifies such loan for inclusion in

1 a bulk asset sale of defaulted or repurchased loans
2 or other financings, it shall give prior notice thereof
3 to any certified development company which has a
4 contingent liability under this section. The notice
5 shall be given to the company as soon as possible
6 after the financing is identified, but not less than 90
7 days before the date the Administration first makes
8 any records on such financing available for examina-
9 tion by prospective purchasers prior to its offering in
10 a package of loans for bulk sale.

11 “(2) LIMITATIONS.—The Administration shall
12 not offer any loan described in paragraph (1) as
13 part of a bulk sale unless it—

14 “(A) provides prospective purchasers with
15 the opportunity to examine the Administration’s
16 records with respect to such loan; and

17 “(B) provides the notice required by para-
18 graph (1).”.

19 **SEC. 7. LOAN LIQUIDATION.**

20 (a) LIQUIDATION AND FORECLOSURE.—Title V of
21 the Small Business Investment Act of 1958 (15 U.S.C.
22 695 et seq.) is amended by adding at the end the fol-
23 lowing:

1 **“SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.**

2 “(a) DELEGATION OF AUTHORITY.—In accordance
3 with this section, the Administration shall delegate to any
4 qualified State or local development company (as defined
5 in section 503(e)) that meets the eligibility requirements
6 of subsection (b)(1) the authority to foreclose and liq-
7 uidate, or to otherwise treat in accordance with this sec-
8 tion, defaulted loans in its portfolio that are funded with
9 the proceeds of debentures guaranteed by the Administra-
10 tion under section 503.

11 “(b) ELIGIBILITY FOR DELEGATION.—

12 “(1) REQUIREMENTS.—A qualified State or
13 local development company shall be eligible for a del-
14 egation of authority under subsection (a) if—

15 “(A) the company—

16 “(i) has participated in the loan liq-
17 uidation pilot program established by the
18 Small Business Programs Improvement
19 Act of 1996 (15 U.S.C. 695 note), as in
20 effect on the day before promulgation of
21 final regulations by the Administration im-
22 plementing this section;

23 “(ii) is participating in the Premier
24 Certified Lenders Program under section
25 508; or

1 “(iii) during the 3 fiscal years imme-
2 diately prior to seeking such a delegation,
3 has made an average of not less than 10
4 loans per year that are funded with the
5 proceeds of debentures guaranteed under
6 section 503; and

7 “(B) the company—

8 “(i) has 1 or more employees—

9 “(I) with not less than 2 years of
10 substantive, decision-making experi-
11 ence in administering the liquidation
12 and workout of problem loans secured
13 in a manner substantially similar to
14 loans funded with the proceeds of de-
15 bentures guaranteed under section
16 503; and

17 “(II) who have completed a train-
18 ing program on loan liquidation devel-
19 oped by the Administration in con-
20 junction with qualified State and local
21 development companies that meet the
22 requirements of this paragraph; or

23 “(ii) submits to the Administration
24 documentation demonstrating that the
25 company has contracted with a qualified

1 third-party to perform any liquidation ac-
2 tivities and secures the approval of the
3 contract by the Administration with re-
4 spect to the qualifications of the contractor
5 and the terms and conditions of liquidation
6 activities.

7 “(2) CONFIRMATION.—On request the Adminis-
8 tration shall examine the qualifications of any com-
9 pany described in subsection (a) to determine if such
10 company is eligible for the delegation of authority
11 under this section. If the Administration determines
12 that a company is not eligible, the Administration
13 shall provide the company with the reasons for such
14 ineligibility.

15 “(c) SCOPE OF DELEGATED AUTHORITY.—

16 “(1) IN GENERAL.—Each qualified State or
17 local development company to which the Administra-
18 tion delegates authority under section (a) may with
19 respect to any loan described in subsection (a)—

20 “(A) perform all liquidation and fore-
21 closure functions, including the purchase in ac-
22 cordance with this subsection of any other in-
23 debtedness secured by the property securing the
24 loan, in a reasonable and sound manner accord-
25 ing to commercially accepted practices, pursu-

1 ant to a liquidation plan approved in advance
2 by the Administration under paragraph (2)(A);

3 “(B) litigate any matter relating to the
4 performance of the functions described in sub-
5 paragraph (A), except that the Administration
6 may—

7 “(i) defend or bring any claim if—

8 “(I) the outcome of the litigation
9 may adversely affect the Administra-
10 tion’s management of the loan pro-
11 gram established under section 502;
12 or

13 “(II) the Administration is enti-
14 tled to legal remedies not available to
15 a qualified State or local development
16 company and such remedies will ben-
17 efit either the Administration or the
18 qualified State or local development
19 company; or

20 “(ii) oversee the conduct of any such
21 litigation; and

22 “(C) take other appropriate actions to
23 mitigate loan losses in lieu of total liquidation
24 or foreclosures, including the restructuring of a
25 loan in accordance with prudent loan servicing

1 practices and pursuant to a workout plan ap-
2 proved in advance by the Administration under
3 paragraph (2)(C).

4 “(2) ADMINISTRATION APPROVAL.—

5 “(A) LIQUIDATION PLAN.—

6 “(i) IN GENERAL.—Before carrying
7 out functions described in paragraph
8 (1)(A), a qualified State or local develop-
9 ment company shall submit to the Admin-
10 istration a proposed liquidation plan.

11 “(ii) ADMINISTRATION ACTION ON
12 PLAN.—

13 “(I) TIMING.—Not later than 15
14 business days after a liquidation plan
15 is received by the Administration
16 under clause (i), the Administration
17 shall approve or reject the plan.

18 “(II) NOTICE OF NO DECISION.—

19 With respect to any plan that cannot
20 be approved or denied within the 15-
21 day period required by subclause (I),
22 the Administration shall within such
23 period provide in accordance with sub-
24 paragraph (E) notice to the company
25 that submitted the plan.

1 “(iii) ROUTINE ACTIONS.—In carrying
2 out functions described in paragraph
3 (1)(A), a qualified State or local develop-
4 ment company may undertake routine ac-
5 tions not addressed in a liquidation plan
6 without obtaining additional approval from
7 the Administration.

8 “(B) PURCHASE OF INDEBTEDNESS.—

9 “(i) IN GENERAL.—In carrying out
10 functions described in paragraph (1)(A), a
11 qualified State or local development com-
12 pany shall submit to the Administration a
13 request for written approval before com-
14 mitting the Administration to the purchase
15 of any other indebtedness secured by the
16 property securing a defaulted loan.

17 “(ii) ADMINISTRATION ACTION ON RE-
18 QUEST.—

19 “(I) TIMING.—Not later than 15
20 business days after receiving a request
21 under clause (i), the Administration
22 shall approve or deny the request.

23 “(II) NOTICE OF NO DECISION.—

24 With respect to any request that can-
25 not be approved or denied within the

1 15-day period required by subclause
2 (I), the Administration shall within
3 such period provide in accordance
4 with subparagraph (E) notice to the
5 company that submitted the request.

6 “(C) WORKOUT PLAN.—

7 “(i) IN GENERAL.—In carrying out
8 functions described in paragraph (1)(C), a
9 qualified State or local development com-
10 pany shall submit to the Administration a
11 proposed workout plan.

12 “(ii) ADMINISTRATION ACTION ON
13 PLAN.—

14 “(I) TIMING.—Not later than 15
15 business days after a workout plan is
16 received by the Administration under
17 clause (i), the Administration shall
18 approve or reject the plan.

19 “(II) NOTICE OF NO DECISION.—

20 With respect to any workout plan that
21 cannot be approved or denied within
22 the 15-day period required by sub-
23 clause (I), the Administration shall
24 within such period provide in accord-

1 ance with subparagraph (E) notice to
2 the company that submitted the plan.

3 “(D) COMPROMISE OF INDEBTEDNESS.—

4 In carrying out functions described in para-
5 graph (1)(A), a qualified State or local develop-
6 ment company may—

7 “(i) consider an offer made by an obli-
8 gor to compromise the debt for less than
9 the full amount owing; and

10 “(ii) pursuant to such an offer, re-
11 lease any obligor or other party contin-
12 gently liable, if the company secures the
13 written approval of the Administration.

14 “(E) CONTENTS OF NOTICE OF NO DECI-
15 SION.—Any notice provided by the Administra-
16 tion under subparagraphs (A)(ii)(II),
17 (B)(ii)(II), or (C)(ii)(II)—

18 “(i) shall be in writing;

19 “(ii) shall state the specific reason for
20 the Administration’s inability to act on a
21 plan or request;

22 “(iii) shall include an estimate of the
23 additional time required by the Adminis-
24 tration to act on the plan or request; and

1 “(iv) if the Administration cannot act
2 because insufficient information or docu-
3 mentation was provided by the company
4 submitting the plan or request, shall speci-
5 fy the nature of such additional informa-
6 tion or documentation.

7 “(3) CONFLICT OF INTEREST.—In carrying out
8 functions described in paragraph (1), a qualified
9 State or local development company shall take no ac-
10 tion that would result in an actual or apparent con-
11 flict of interest between the company (or any em-
12 ployee of the company) and any third party lender,
13 associate of a third party lender, or any other person
14 participating in a liquidation, foreclosure, or loss
15 mitigation action.

16 “(d) SUSPENSION OR REVOCATION OF AUTHOR-
17 ITY.—The Administration may revoke or suspend a dele-
18 gation of authority under this section to any qualified
19 State or local development company, if the Administration
20 determines that the company—

21 “(1) does not meet the requirements of sub-
22 section (b)(1);

23 “(2) has violated any applicable rule or regula-
24 tion of the Administration or any other applicable
25 law; or

1 “(3) fails to comply with any reporting require-
2 ment that may be established by the Administration
3 relating to carrying out of functions described in
4 paragraph (1).

5 “(e) REPORT.—

6 “(1) IN GENERAL.—Based on information pro-
7 vided by qualified State and local development com-
8 panies and the Administration, the Administration
9 shall annually submit to the Committees on Small
10 Business of the House of Representatives and of the
11 Senate a report on the results of delegation of au-
12 thority under this section.

13 “(2) CONTENTS.—Each report submitted under
14 paragraph (1) shall include the following informa-
15 tion:

16 “(A) With respect to each loan foreclosed
17 or liquidated by a qualified State or local devel-
18 opment company under this section, or for
19 which losses were otherwise mitigated by the
20 company pursuant to a workout plan under this
21 section—

22 “(i) the total cost of the project fi-
23 nanced with the loan;

24 “(ii) the total original dollar amount
25 guaranteed by the Administration;

1 “(iii) the total dollar amount of the
2 loan at the time of liquidation, foreclosure,
3 or mitigation of loss;

4 “(iv) the total dollar losses resulting
5 from the liquidation, foreclosure, or mitiga-
6 tion of loss; and

7 “(v) the total recoveries resulting
8 from the liquidation, foreclosure, or mitiga-
9 tion of loss, both as a percentage of the
10 amount guaranteed and the total cost of
11 the project financed.

12 “(B) With respect to each qualified State
13 or local development company to which author-
14 ity is delegated under this section, the totals of
15 each of the amounts described in clauses (i)
16 through (v) of subparagraph (A).

17 “(C) With respect to all loans subject to
18 foreclosure, liquidation, or mitigation under this
19 section, the totals of each of the amounts de-
20 scribed in clauses (i) through (v) of subpara-
21 graph (A).

22 “(D) A comparison between—

23 “(i) the information provided under
24 subparagraph (C) with respect to the 12-

1 month period preceding the date on which
2 the report is submitted; and

3 “(ii) the same information with re-
4 spect to loans foreclosed and liquidated, or
5 otherwise treated, by the Administration
6 during the same period.

7 “(E) The number of times that the Admin-
8 istration has failed to approve or reject a liq-
9 uidation plan in accordance with subparagraph
10 (A)(i), a workout plan in accordance with sub-
11 paragraph (C)(i), or to approve or deny a re-
12 quest for purchase of indebtedness under sub-
13 paragraph (B)(i), including specific information
14 regarding the reasons for the Administration’s
15 failure and any delays that resulted.”.

16 (b) REGULATIONS.—

17 (1) IN GENERAL.—Not later than 150 days
18 after the date of enactment of this Act, the Adminis-
19 trator shall issue such regulations as may be nec-
20 essary to carry out section 510 of the Small Busi-
21 ness Investment Act of 1958, as added by subsection
22 (a) of this section.

23 (2) TERMINATION OF PILOT PROGRAM.—Begin-
24 ning on the date which the final regulations are
25 issued under paragraph (1), section 204 of the

- 1 Small Business Programs Improvement Act of 1996
- 2 (15 U.S.C. 695 note) shall cease to have effect.

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