

106TH CONGRESS
1ST SESSION

H. R. 2764

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1999

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

A BILL

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

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

3 **SECTION. 101. SHORT TITLE.**

4 This Act may be cited as the "America's Private In-
5 vestment Companies Act".

6 **SEC. 102. CONGRESSIONAL FINDINGS AND PURPOSES.**

7 (a) CONGRESSIONAL FINDINGS.—

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

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

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

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

14 (1) license private for profit community devel-
15 opment entities that will focus on making equity and
16 credit investments for large-scale business develop-
17 ments that benefit low-income communities;

18 (2) provide credit enhancement for those enti-
19 ties for use in low-income communities; and

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

1 **SEC. 103. DEFINITIONS.**

2 As used in this Act:

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

5 (2) The term “Agency” has the meaning given
6 such term in section 551(1) of title 5, United States
7 Code.

8 (3) The term “APIC” means a business entity
9 that has been licensed under the terms of this Act
10 as an America’s Private Investment Company, and
11 the license of which has not been revoked.

12 (4) The term “community development entity”
13 means an entity whose primary mission must be
14 serving or providing investment capital for low-in-
15 come communities or low-income persons and which
16 maintains accountability to residents of low-income
17 communities.

18 (5) The term “cost” has the meaning set forth
19 in section 502(5) of the Federal Credit Reform Act
20 of 1990.

21 (6) The term “debentures” means debt instru-
22 ments the terms of any of which may be specified
23 by the Secretary.

24 (7) The term “HUD” means the Secretary of
25 Housing and Urban Development or the Department

1 of Housing and Urban Development, as the context
2 requires.

3 (8) The term “low-income communities” means
4 census tracts with (A) poverty rates of at least 20
5 percent, based on the most recent census data; or
6 (B) median family income that does not exceed 80
7 percent of the greater of (i) metropolitan area me-
8 dian family income, or (ii) statewide median family
9 income.

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

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

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

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

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

1 collectibles, other than collectibles held pri-
2 marily for sale to customers.

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

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

10 **SEC. 104. AUTHORIZATION.**

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

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

23 (c) USE OF CREDIT SUBSIDY FOR LICENSES.—

24 (1) NUMBER OF LICENSES.—The Secretary is
25 authorized to have outstanding at any one time the

1 number of licenses for APICs that may be supported
2 by the amount of the budget authority appropriated
3 in accordance with the Federal Credit Reform Act of
4 1990 for the subsidy cost and the investment strate-
5 gies of such APICs.

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

13 (d) COOPERATION AND COORDINATION.—

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

22 (2) OPERATIONS.—The Secretary may carry
23 out this Act—

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

4 (B) indirectly, under contracts or agree-
5 ments, as the Secretary shall determine.

6 (e) FEES AND CHARGES FOR ADMINISTRATIVE
7 COSTS.—To the extent provided in appropriations Acts,
8 the Secretary is authorized to impose fees and charges for
9 application, review, licensing, and regulation, or other ac-
10 tions under this Act, and to pay for the costs of such ac-
11 tivities from the fees and charges collected.

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

15 (g) FUNDING.—

16 (1) AUTHORIZATION FOR APPROPRIATION OF
17 COST OF ANNUAL LOAN GUARANTEE COMMIT-
18 MENT.—For each of fiscal years 2000, 2001, 2002,
19 2003, and 2004, there is authorized to be appro-
20 priated up to \$36,000,000 for the cost of annual
21 loan guarantee commitments under this Act. The
22 Secretary may make commitments to guarantee
23 loans only to the extent that the total loan principal,
24 any part of which is guaranteed, will not exceed
25 \$1,000,000,000, or the amount specified in appro-

1 appropriations Acts in each such fiscal year. Amounts ap-
2 propriated under this paragraph shall remain avail-
3 able for 5 years.

4 (2) AUTHORIZATION FOR APPROPRIATION OF
5 ADMINISTRATIVE EXPENSES.—For each of the fiscal
6 years 2000, 2001, 2002, 2003, and 2004, there is
7 authorized to be appropriated \$1,000,000 for admin-
8 istrative expenses for carrying out this Act. The Sec-
9 retary may transfer amounts appropriated under
10 this paragraph to any appropriation account of
11 HUD or another agency, to carry out the program
12 under this Act. Any agency to which the Secretary
13 may transfer amounts under this Act is authorized
14 to accept such transferred amounts in any appro-
15 priation account of such agency.

16 **SEC. 105. SELECTION OF APICS.**

17 (a) NOTICE OF COMPETITIONS.—The Secretary shall
18 select APICs for licensing on the basis of competitions.
19 Such competitions shall be announced by a Federal Reg-
20 ister notice that invites applications for APIC licenses.
21 Each such notice shall set forth application requirements,
22 and such other terms of the competition not otherwise pro-
23 vided for, as determined by the Secretary.

24 (b) LICENSEE SELECTION CRITERIA.—The Secretary
25 shall select among applicants for licenses on the basis of

1 the extent to which an applicant may be expected to
2 achieve the goals of the Act by satisfying the requirements
3 set forth in this subsection.

4 (1) The applicant shall be a private for profit
5 entity that qualifies as a community development en-
6 tity for the purposes of the New Markets Tax Cred-
7 its, to the extent such credits are established under
8 Federal law.

9 (2) The entity must, as of the time that the li-
10 cense is approved, have reasonably available to it, as
11 determined by the Secretary, a minimum of
12 \$25,000,000 in equity capital, as determined by the
13 Secretary.

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

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

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

1 (6) The entity must prepare and submit a
2 statement of public purpose goals. The statement
3 shall include elements specified by the Secretary, in-
4 cluding proposed measurements and strategies for
5 meeting the goals. The goals shall promote commu-
6 nity and economic development, and include at
7 least—

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

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

13 (C) involvement of community-based orga-
14 nizations and residents in community develop-
15 ment activities.

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

20 (8) The entity must agree to comply with appli-
21 cable laws, including Federal executive orders, Office
22 of Management and Budget circulars, and Treasury
23 requirements, and such operating and regulatory re-
24 quirements as the Secretary may impose from time
25 to time.

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

4 (c) COMMUNICATIONS BETWEEN HUD AND APPLI-
5 CANTS DURING SELECTION PROCESS.—

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

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

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

21 (C) restrict such officers and employees
22 from revealing to any applicant—

23 (i) the fact or chances of award of a
24 license to such applicant, unless there has

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

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

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

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

20 (3) Section 12(e)(2) of the Department of
21 Housing and Urban Development Act (42 U.S.C.
22 3537a(e)(2)) is amended by inserting before the pe-
23 riod at the end the following: “, or any license pro-
24 vided under the America’s Private Investment Com-
25 panies Act”.

1 **SEC. 106. OPERATIONS OF APICS.**

2 (a) IN GENERAL.—

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

5 (A) that the APIC derives from the juris-
6 diction in which it is organized, or that the
7 APIC otherwise has;

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

10 (C) as the Secretary may prescribe by reg-
11 ulation.

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

18 (b) INVESTMENT LIMITATIONS.—

19 (1) QUALIFIED LOW-INCOME COMMUNITY IN-
20 VESTMENTS.—Substantially all investments that an
21 APIC makes must be qualified low-income commu-
22 nity investments if the investments are financed
23 with—

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

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

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

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

10 (A) the APIC's equity capital; plus

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

15 (c) BORROWING POWERS; DEBENTURES.—

16 (1) ISSUING.—An APIC may issue debentures
17 that the Secretary may guarantee under the terms
18 of this Act.

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

21 (A) the total amount of debentures that an
22 APIC issues under this Act that an APIC may
23 have outstanding at any one time shall not ex-
24 ceed an amount equal to 200 percent of the eq-
25 uity capital of the APIC, as determined by the

1 Secretary: *Provided*, That the Secretary may by
2 regulation increase the foregoing percentage to
3 up to 300 percent for all APICs, or any reason-
4 able class of APICs; and

5 (B) an APIC must not have more than
6 \$300,000,000 in face value of debentures issued
7 under this Act outstanding at any one time.

8 (3) REPAYMENT.—

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

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

22 (C) Until an APIC has repaid all interest
23 and principal amounts on APIC borrowings
24 under this subsection, an APIC may use the

1 proceeds of investments in accordance with reg-
2 ulations issued by the Secretary only to—

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

6 (ii) pay for the reasonable administra-
7 tive expenses of the APIC;

8 (iii) purchase Treasury securities;

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

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

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

17 (D) After an APIC has repaid all interest
18 and principal amounts on APIC borrowings
19 under this subsection, and subject to continuing
20 compliance with subsection (a), the APIC may
21 use the proceeds from investments to make in-
22 terest, dividend, or other distributions to or on
23 behalf of investors in the nature of returns on
24 capital, or the withdrawal of equity capital,
25 without regard to subparagraph (C) but in con-

1 formity with the APIC's investment strategy
2 and statement of public purpose goals.

3 (d) REUSE OF DEBENTURE PROCEEDS.—An APIC
4 may use the proceeds of sale of Treasury securities pur-
5 chased under subsection (c)(3)(C)(iii) to make qualified
6 low-income community investments, subject to the Sec-
7 retary's approval. In making the request for the Sec-
8 retary's approval, the APIC shall follow the procedures ap-
9 plicable to an APIC's request for HUD guarantee action,
10 as the Secretary may modify such procedures for imple-
11 mentation of this subsection. Such procedures shall never-
12 theless include the description and certifications that an
13 APIC must include in all requests for guarantee action,
14 and the environmental certification applicable to initial ex-
15 penditures for a project or activity.

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

1 (f) EXCLUSION OF APIC FROM DEFINITION OF
2 DEBTOR UNDER BANKRUPTCY PROVISIONS.—Section
3 109(b)(2) of title 11, United States Code, is amended by
4 inserting before “credit union” the following: “America’s
5 Private Investment Companies licensed by the Depart-
6 ment of Housing and Urban Development under the
7 America’s Private Investment Companies Act,”.

8 **SEC. 107. CREDIT ENHANCEMENT BY THE FEDERAL GOV-**
9 **ERNMENT.**

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

1 interest, or other amounts of an APIC, notwithstanding
2 any Federal or other law. Debentures may be issued for
3 a term of not to exceed 21 years and shall bear interest
4 during all or any part of that time period at a rate or
5 rates approved by the Secretary. The debentures shall also
6 contain such other terms as the Secretary may fix.

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

12 (c) GUARANTEE OF TRUST CERTIFICATES.—

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

22 (2) SUBSTITUTION OPTION.—The Secretary
23 shall have the option to replace in the corpus of the
24 trust any prepaid or defaulted debenture with a de-
25 benture, another full faith and credit instrument, or

1 any obligations of the United States, that may rea-
2 sonably substitute for such prepaid or defaulted de-
3 benture.

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

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

24 (e) SUBROGATION AND LIENS.—

1 (1) In the event the Secretary pays a claim
2 under a guarantee issued under this section, the
3 Secretary shall be subrogated fully to the rights sat-
4 isfied by such payment.

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

9 (f) REGISTRATION.—

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

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

1 determines to be necessary to protect the interests of
2 the Government.

3 (3) Book-entry or other electronic forms of reg-
4 istration for trust certificates under this Act are au-
5 thORIZED.

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

11 **SEC. 108. APIC REQUESTS FOR GUARANTEE ACTIONS.**

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

- 21 (1) this Act and other applicable laws;
- 22 (2) all terms and conditions of its license, and
23 of any penalty or condition that may have arisen
24 from examination or monitoring by the Secretary or

1 otherwise, including the satisfaction of any financial
2 audit exception that may have been outstanding;

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

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

8 (b) REQUESTS FOR GUARANTEE OF DEBENTURES
9 THAT WOULD INCLUDE FUNDING FOR INITIAL EXPENDI-
10 TURE FOR A PROJECT OR ACTIVITY.—In addition to the
11 description and certification that an APIC is required to
12 supply in all requests for guarantee action under sub-
13 section (a), in the case of an APIC’s request for a guar-
14 antee that includes a debenture, the proceeds of which the
15 APIC expects to be used as its initial expenditure for a
16 project or activity in which the APIC intends to invest,
17 and the expenditure for which would require an environ-
18 mental assessment under the National Environmental Pol-
19 icy Act of 1969 and other related laws that further the
20 purposes of such Act, such request for guarantee action
21 must include evidence satisfactory to the Secretary of the
22 certification of the completion of environmental review of
23 the project or activity required of the cognizant State or
24 local government under subsection (c). If the environ-
25 mental review responsibility for the project or activity has

1 not been assumed by a State or local government under
2 subsection (c), then the Secretary is responsible for car-
3 rying out the applicable responsibilities under the National
4 Environmental Policy Act of 1969 and other provisions
5 of law that further the purposes of such Act that relate
6 to the project or activity, and the Secretary must execute
7 such responsibilities before acting on the APIC's request
8 for the guarantee that is covered by this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 retary specify insofar as those responsibilities relate
2 to the guarantees of debentures, any parts of the
3 proceeds of which are to fund such investments,
4 which are covered by such certification.

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

7 (A) be in a form acceptable to the Sec-
8 retary;

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

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

17 (D) specify that the certifying officer—

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

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

7 **SEC. 109. EXAMINATION AND MONITORING OF APICS.**

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

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

20 (1) REPORTING AND UPDATING.—The Sec-
21 retary may establish such annual or more frequent
22 reporting requirements for APICs, and such require-
23 ments for independent audits, and the updating of
24 the statement of public purpose goals, investment
25 strategy (including the benchmarks in such strat-

1 egy), and other documents that may have been used
2 in the license application process under this Act, as
3 the Secretary determines necessary to assist the Sec-
4 retary in monitoring the compliance and perform-
5 ance of APICs.

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

11 (3) EXAMINATION STANDARDS.—

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

1 (B) PERFORMANCE AND OTHER EXAMINA-
2 TIONS.—The Secretary shall monitor each
3 APIC’s progress in meeting the goals in the
4 APIC’s statement of public purpose goals, exe-
5 cuting the APIC’s investment strategy, and
6 other matters.

7 **SEC. 110. INCENTIVES AND PENALTIES.**

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

15 (b) PENALTIES.—

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

1 (2) PENALTIES REQUIRING NOTICE AND HEAR-
2 ING.—With respect to an act of commission or omis-
3 sion under paragraph (1) for which the Secretary
4 may penalize an APIC or a manager, the Secretary
5 may, following notice in writing to the APIC or the
6 manager, and opportunity for administrative
7 hearing—

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

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

14 (C) revoke the APIC’s license.

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

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

1 (B) the suspension of an APIC's license, or
2 the conditioning of the use of an APIC's li-
3 cense, for up to 90 days, including the deferral
4 for the period of the suspension of a commit-
5 ment to guarantee any new debenture of the
6 APIC; or

7 (C) any other penalty that the Secretary
8 determines to be less burdensome to the APIC
9 than a penalty that requires notice and an ad-
10 ministrative hearing under this Act.

11 (c) PROCEDURES.—

12 (1) No award under this section shall be made
13 until notice thereof is published in the Federal Reg-
14 ister.

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

22 (3)(A) The Secretary may suspend or condition
23 an APIC's license for up to 45 days without prior
24 notice in the Federal Register, but such suspension
25 or conditioning shall take effect only after the Sec-

1 retary has issued a written notice (including a writ-
2 ing in electronic form) of such action to the APIC.
3 Such written notice shall be effective without regard
4 to whether the APIC has been accorded the oppor-
5 tunity to respond. Such suspension or conditioning
6 shall be subject to enforcement by an order of a
7 court when the Secretary has issued such written
8 notice.

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

18 (C) During the time period of such suspension
19 or conditioning, the Secretary may proceed under
20 subsection (b)(2), and in accordance with the proce-
21 dures applicable to such subsection, to revoke the
22 APIC's license. Only if the Secretary so proceeds,
23 notwithstanding any other provision of this section,
24 the Secretary may extend the suspension or condi-

1 tioning of the APIC’s license by publishing a notice
2 of such action in the Federal Register—

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

5 (ii) for any subsequent extensions of up to
6 90 days, before the preceding period of up to
7 90 days expires.

8 (D) The suspension or conditioning of an
9 APIC’s license by the Secretary under this para-
10 graph shall remain in effect in accordance with its
11 terms until final adjudication in any litigation un-
12 dertaken to challenge such suspension or condi-
13 tioning, or revocation, of an APIC’s license.

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