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106TH CONGRESS
2^D SESSION

H. R. 2764

[Report No. 106-638]

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

MAY 23, 2000

Additional sponsors: Mr. PASTOR, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. UDALL of Colorado, Mr. SNYDER, Mr. BECERRA, Mr. ORTIZ, Mr. REYES, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. SERRANO, Ms. VELAZQUEZ, Mr. LARSON, Mr. RAHALL, Ms. PELOSI, Ms. DEGETTE, Mr. MARTINEZ, Mr. THOMPSON of Mississippi, Mr. ENGEL, Ms. LEE, and Mr. FATTAH

MAY 23, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]
[For text of introduced bill, see copy of bill as introduced on August 5, 1999]

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. 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 *(a) FINDINGS.—The Congress finds that—*

8 *(1) people living in distressed areas, both urban*
9 *and rural, that are characterized by high levels of job-*
10 *lessness, poverty, and low incomes have not benefited*
11 *adequately from the economic expansion experienced*
12 *by the Nation as a whole;*

13 *(2) unequal access to economic opportunities*
14 *continues to make the social costs of joblessness and*
15 *poverty to our Nation very high; and*

16 *(3) there are significant untapped markets in*
17 *our Nation, and many of these are in areas that are*

1 *underserved by institutions that can make equity and*
2 *credit investments.*

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

4 *(1) license private for profit community develop-*
5 *ment entities that will focus on making equity and*
6 *credit investments for large-scale business develop-*
7 *ments that benefit low-income communities;*

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

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

15 **SEC. 3. DEFINITIONS.**

16 *As used in this Act:*

17 *(1) ADMINISTRATOR.—The term “Adminis-*
18 *trator” means the Administrator of the Small Busi-*
19 *ness Administration.*

20 *(2) AGENCY.—The term “agency” has the mean-*
21 *ing given such term in section 551(1) of title 5,*
22 *United States Code.*

23 *(3) APIC.—The term “APIC” means a business*
24 *entity that has been licensed under the terms of this*

1 *Act as an America’s Private Investment Company,*
2 *and the license of which has not been revoked.*

3 (4) *COMMUNITY DEVELOPMENT ENTITY.*—*The*
4 *term “community development entity” means an en-*
5 *tity the primary mission of which is serving or pro-*
6 *viding investment capital for low-income commu-*
7 *nities or low-income persons and which maintains ac-*
8 *countability to residents of low-income communities.*

9 (5) *HUD.*—*The term “HUD” means the Sec-*
10 *retary of Housing and Urban Development or the De-*
11 *partment of Housing and Urban Development, as the*
12 *context requires.*

13 (6) *LICENSE.*—*The term “license” means a li-*
14 *cence issued by HUD as provided in section 4.*

15 (7) *LOW-INCOME COMMUNITY.*—*The term “low-*
16 *income community” means—*

17 (A) *a census tract or tracts that have—*

18 (i) *a poverty rate of 20 percent or*
19 *greater, based on the most recent census*
20 *data; or*

21 (ii) *a median family income that does*
22 *not exceed 80 percent of the greater of (I)*
23 *the median family income for the metropoli-*
24 *tan area in which such census tract or*
25 *tracts are located, or (II) the median family*

1 *income for the State in which such census*
2 *tract or tracts are located; or*

3 *(B) a property that was located on a mili-*
4 *tary installation that was closed or realigned*
5 *pursuant to title II of the Defense Authorization*
6 *Amendments and Base Closure and Realignment*
7 *Act (Public Law 100–526; 10 U.S.C. 2687 note),*
8 *the Defense Base Closure and Realignment Act of*
9 *1990 (part A of title XXIX of Public Law 101–*
10 *510; 10 U.S.C. 2687 note), section 2687 of title*
11 *10, United States Code, or any other similar law*
12 *enacted after the date of the enactment of this*
13 *Act that provides for closure or realignment of*
14 *military installations.*

15 *(8) LOW-INCOME PERSON.—The term “low-in-*
16 *come person” means a person who is a member of a*
17 *low-income family, as such term is defined in section*
18 *104 of the Cranston-Gonzalez National Affordable*
19 *Housing Act (42 U.S.C. 12704).*

20 *(9) PRIVATE EQUITY CAPITAL.—*

21 *(A) IN GENERAL.—The term “private eq-*
22 *uity capital”—*

23 *(i) in the case of a corporate entity, the*
24 *paid-in capital and paid-in surplus of the*
25 *corporate entity;*

1 (ii) in the case of a partnership entity,
2 the contributed capital of the partners of the
3 partnership entity;

4 (iii) in the case of a limited liability
5 company entity, the equity investment of
6 the members of the limited liability com-
7 pany entity; and

8 (iv) earnings from investments of the
9 entity that are not distributed to investors
10 and are available for reinvestment by the
11 entity.

12 (B) *EXCLUSIONS.*—Such term does not in-
13 clude any—

14 (i) funds borrowed by an entity from
15 any source or obtained through the issuance
16 of leverage; except that this clause may not
17 be construed to exclude amounts evidenced
18 by a legally binding and irrevocable invest-
19 ment commitment in the entity, or the use
20 by an entity of a pledge of such investment
21 commitment to obtain bridge financing
22 from a private lender to fund the entity’s
23 activities on an interim basis; or

24 (ii) funds obtained directly or indi-
25 rectly from any Federal, State, or local gov-

1 *ernment or any government agency, except*
2 *for—*

3 *(I) funds invested by an employee*
4 *welfare benefit plan or pension plan;*
5 *and*

6 *(II) credits against any Federal,*
7 *State, or local taxes.*

8 *(10) QUALIFIED ACTIVE BUSINESS.—The term*
9 *“qualified active business” means a business or*
10 *trade—*

11 *(A) that, at the time that an investment is*
12 *made in the business or trade, is deriving at*
13 *least 50 percent of its gross income from the con-*
14 *duct of trade or business activities in low-income*
15 *communities;*

16 *(B) a substantial portion of the use of the*
17 *tangible property of which is used within low-in-*
18 *come communities;*

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

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

1 *lectibles, other than collectibles held primarily*
2 *for sale to customers.*

3 (11) *QUALIFIED DEBENTURE.*—*The term “quali-*
4 *fied debenture” means a debt instrument having*
5 *terms that meet the requirements established pursuant*
6 *to section 6(c)(1).*

7 (12) *QUALIFIED LOW-INCOME COMMUNITY IN-*
8 *VESTMENT.*—*The term “qualified low-income commu-*
9 *nity investment” mean an equity investment in, or a*
10 *loan to, a qualified active business.*

11 (13) *SECRETARY.*—*The term “Secretary” means*
12 *the Secretary of Housing and Urban Development,*
13 *unless otherwise specified in this Act.*

14 **SEC. 4. AUTHORIZATION.**

15 (a) *LICENSES.*—*The Secretary is authorized to license*
16 *community development entities as America’s Private In-*
17 *vestment Companies, in accordance with the terms of this*
18 *Act.*

19 (b) *REGULATIONS.*—*The Secretary shall regulate*
20 *APICs for compliance with sound financial management*
21 *practices, and the program and procedural goals of this and*
22 *other related Acts, and other purposes as required or au-*
23 *thorized by this Act, or determined by the Secretary. The*
24 *Secretary shall issue such regulations as are necessary to*
25 *carry out the licensing and regulatory and other duties*

1 *under this Act, and may issue notices and other guidance*
2 *or directives as the Secretary determines are appropriate*
3 *to carry out such duties.*

4 *(c) USE OF CREDIT SUBSIDY FOR LICENSES.—*

5 *(1) NUMBER OF LICENSES.—The number of*
6 *APICs licensed at any one time may not exceed—*

7 *(A) the number that may be supported by*
8 *the amount of budget authority appropriated in*
9 *accordance with section 504(b) of the Federal*
10 *Credit Reform Act of 1990 (2 U.S.C. 661c) for*
11 *the cost (as such term is defined in section 502*
12 *of such Act) of the subsidy and the investment*
13 *strategies of such APICs; or*

14 *(B) to the extent the limitation under sec-*
15 *tion 5(e)(1) applies, the number authorized*
16 *under such section.*

17 *(2) USE OF ADDITIONAL CREDIT SUBSIDY.—Sub-*
18 *ject to the limitation under paragraph (1), the Sec-*
19 *retary may use any budget authority available after*
20 *credit subsidy has been allocated for the APICs ini-*
21 *tially licensed pursuant to section 5 as follows:*

22 *(A) ADDITIONAL LICENSES.—To license ad-*
23 *ditional APICs.*

24 *(B) CREDIT SUBSIDY INCREASES.—To in-*
25 *crease the credit subsidy allocated to an APIC as*

1 *an award for high performance under this Act,*
2 *except that such increases may be made only in*
3 *accordance with the following requirements and*
4 *limitations:*

5 *(i) TIMING.—An increase may only be*
6 *provided for an APIC that has been licensed*
7 *for a period of not less than 2 years.*

8 *(ii) COMPETITION.—An increase may*
9 *only be provided for a fiscal year pursuant*
10 *to a competition for such fiscal year among*
11 *APICs eligible for, and requesting, such an*
12 *increase. The competition shall be based*
13 *upon criteria that the Secretary shall estab-*
14 *lish, which shall include the financial*
15 *soundness and performance of the APICs, as*
16 *measured by achievement of the public per-*
17 *formance goals included in the APICs state-*
18 *ments required under section 5(a)(6) and*
19 *audits conducted under section 9(b)(2).*
20 *Among the criteria established by the Sec-*
21 *retary to determine priority for selection*
22 *under this section, the Secretary shall in-*
23 *clude making investments in and loans to*
24 *qualified active businesses in urban or rural*
25 *areas that have been designated under sub-*

1 *chapter U of Chapter 1 of the Internal Rev-*
2 *enue Code of 1986 as empowerment zones or*
3 *enterprise communities.*

4 *(d) COOPERATION AND COORDINATION.—*

5 *(1) PROGRAM POLICIES.—The Secretary is au-*
6 *thorized to coordinate and cooperate, through memo-*
7 *randa of understanding, an APIC liaison committee,*
8 *or otherwise, with the Administrator, the Secretary of*
9 *the Treasury, and other agencies in the discretion of*
10 *the Secretary, on implementation of this Act, includ-*
11 *ing regulation, examination, and monitoring of*
12 *APICs under this Act.*

13 *(2) FINANCIAL SOUNDNESS REQUIREMENTS.—*
14 *The Secretary shall consult with the Administrator*
15 *and the Secretary of the Treasury, and may consult*
16 *with such other heads of agencies as the Secretary*
17 *may consider appropriate, in establishing any regula-*
18 *tions, requirements, guidelines, or standards for fi-*
19 *nancial soundness or management practices of APICs*
20 *or entities applying for licensing as APICs. In imple-*
21 *menting and monitoring compliance with any such*
22 *regulations, requirements, guidelines, and standards,*
23 *the Secretary shall enter into such agreements and*
24 *memoranda of understanding with the Administrator*
25 *and the Secretary of the Treasury as may be appro-*

1 *appropriate to provide for such officials to provide any as-*
2 *sistance that may be agreed to.*

3 (3) *OPERATIONS.—The Secretary may carry out*
4 *this Act—*

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

8 (B) *indirectly, under contracts or agree-*
9 *ments, as the Secretary shall determine.*

10 (e) *FEEES AND CHARGES FOR ADMINISTRATIVE*
11 *COSTS.—To the extent provided in appropriations Acts, the*
12 *Secretary is authorized to impose fees and charges for ap-*
13 *plication, review, licensing, and regulation, or other actions*
14 *under this Act, and to pay for the costs of such activities*
15 *from the fees and charges collected.*

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

19 (g) *FUNDING.—*

20 (1) *AUTHORIZATION OF APPROPRIATIONS FOR*
21 *LOAN GUARANTEE COMMITMENTS.—For each of fiscal*
22 *years 2000, 2001, 2002, 2003, and 2004, there is au-*
23 *thorized to be appropriated up to \$36,000,000 for the*
24 *cost (as such term is defined in section 502(5) of the*
25 *Federal Credit Reform Act of 1990) of annual loan*

1 *guarantee commitments under this Act. Amounts ap-*
2 *propriated under this paragraph shall remain avail-*
3 *able until expended.*

4 (2) *AGGREGATE LOAN GUARANTEE COMMITMENT*
5 *LIMITATION.—The Secretary may make commitments*
6 *to guarantee loans only to the extent that the total*
7 *loan principal, any part of which is guaranteed, will*
8 *not exceed \$1,000,000,000, unless another such*
9 *amount is specified in appropriation Acts for any fis-*
10 *cal year.*

11 (3) *AUTHORIZATION OF APPROPRIATIONS FOR*
12 *ADMINISTRATIVE EXPENSES.—For each of the fiscal*
13 *years 2000, 2001, 2002, 2003, and 2004, there is au-*
14 *thorized to be appropriated \$1,000,000 for adminis-*
15 *trative expenses for carrying out this Act. The Sec-*
16 *retary may transfer amounts appropriated under this*
17 *paragraph to any appropriation account of HUD or*
18 *another agency, to carry out the program under this*
19 *Act. Any agency to which the Secretary may transfer*
20 *amounts under this Act is authorized to accept such*
21 *transferred amounts in any appropriation account of*
22 *such agency.*

23 **SEC. 5. SELECTION OF APICS.**

24 (a) *ELIGIBLE APPLICANTS.—An entity shall be eligible*
25 *to be selected for licensing under section 4 as an APIC only*

1 *if the entity submits an application in compliance with the*
2 *requirements established pursuant to subsection (b) and the*
3 *entity meets or complies with the following requirements:*

4 (1) *ORGANIZATION.—The entity shall be a pri-*
5 *ivate, for-profit entity that qualifies as a community*
6 *development entity for the purposes of the New Mar-*
7 *kets Tax Credits, to the extent such credits are estab-*
8 *lished under Federal law.*

9 (2) *MINIMUM PRIVATE EQUITY CAPITAL.—The*
10 *amount of private equity capital reasonably available*
11 *to the entity, as determined by the Secretary, at the*
12 *time that a license is approved may not be less than*
13 *\$25,000,000.*

14 (3) *QUALIFIED MANAGEMENT.—The management*
15 *of the entity shall, in the determination of the Sec-*
16 *retary, meet such standards as the Secretary shall es-*
17 *tablish to ensure that the management of the APIC is*
18 *qualified, and has the financial expertise, knowledge,*
19 *experience, and capability necessary, to make invest-*
20 *ments for community and economic development in*
21 *low-income communities.*

22 (4) *CONFLICT OF INTEREST.—The entity shall*
23 *demonstrate that, in accordance with sound financial*
24 *management practices, the entity is structured to pre-*

1 *clude financial conflict of interest between the APIC*
2 *and a manager or investor.*

3 (5) *INVESTMENT STRATEGY.—The entity shall*
4 *prepare and submit to the Secretary an investment*
5 *strategy that includes benchmarks for evaluation of*
6 *its progress, that includes an analysis of existing lo-*
7 *cally owned businesses in the communities in which*
8 *the investments under the strategy will be made, that*
9 *prioritizes such businesses for investment opportuni-*
10 *ties, and that fulfills the specific public purpose goals*
11 *of the entity.*

12 (6) *STATEMENT OF PUBLIC PURPOSE GOALS.—*
13 *The entity shall prepare and submit to the Secretary*
14 *a statement of the public purpose goals of the entity,*
15 *which shall—*

16 (A) *set forth goals that shall promote com-*
17 *munity and economic development, which shall*
18 *include—*

19 (i) *making investments in low-income*
20 *communities that further economic develop-*
21 *ment objectives by targeting such invest-*
22 *ments in businesses or trades that comply*
23 *with the requirements under subparagraphs*
24 *(A) through (C) of section 3(10) relating to*

1 *low-income communities in a manner that*
2 *benefits low-income persons;*

3 *(ii) creating jobs in low-income com-*
4 *munities for residents of such communities;*

5 *(iii) involving community-based orga-*
6 *nizations and residents in community de-*
7 *velopment activities;*

8 *(iv) such other goals as the Secretary*
9 *shall specify; and*

10 *(v) such elements as the entity may set*
11 *forth to achieve specific public purpose*
12 *goals;*

13 *(B) include such other elements as the Sec-*
14 *retary shall specify; and*

15 *(C) include proposed measurements and*
16 *strategies for meeting the goals.*

17 *(7) COMPLIANCE WITH LAWS.—The entity shall*
18 *agree to comply with applicable laws, including Fed-*
19 *eral executive orders, Office of Management and*
20 *Budget circulars, and requirements of the Department*
21 *of the Treasury, and such operating and regulatory*
22 *requirements as the Secretary may impose from time*
23 *to time.*

1 (8) *OTHER.*—*The entity shall satisfy any other*
2 *application requirements that the Secretary may im-*
3 *pose by regulation or Federal Register notice.*

4 (b) *COMPETITIONS.*—*The Secretary shall select eligible*
5 *entities under subsection (a) to be licensed under section*
6 *4 as APICs on the basis of competitions. The Secretary shall*
7 *announce each such competition by causing a notice to be*
8 *published in the Federal Register that invites applications*
9 *for licenses and sets forth the requirements for application*
10 *and such other terms of the competition not otherwise pro-*
11 *vided for, as determined by the Secretary.*

12 (c) *SELECTION.*—*In competitions under subsection (b),*
13 *the Secretary shall select eligible entities under subsection*
14 *(a) for licensing as APICs on the basis of—*

15 (1) *the extent to which the entity is expected to*
16 *achieve the goals of this Act by meeting or exceeding*
17 *criteria established under subsection (d); and*

18 (2) *to the extent practicable and subject to the*
19 *existence of approvable applications, ensuring geo-*
20 *graphical diversity among the applicants selected and*
21 *diversity of APICs investment strategies, so that*
22 *urban and rural communities are both served, in the*
23 *determination of the Secretary, by the program under*
24 *this Act.*

1 (d) *SELECTION CRITERIA.*—*The Secretary shall estab-*
2 *lish selection criteria for competitions under subsection (b),*
3 *which shall include the following criteria:*

4 (1) *CAPACITY.*—

5 (A) *MANAGEMENT.*—*The extent to which the*
6 *entity’s management has the quality, experience,*
7 *and expertise to make and manage successful in-*
8 *vestments for community and economic develop-*
9 *ment in low-income communities.*

10 (B) *STATE AND LOCAL COOPERATION.*—*The*
11 *extent to which the entity demonstrates a capac-*
12 *ity to cooperate with States or units of general*
13 *local government and with community-based or-*
14 *ganizations and residents of low-income commu-*
15 *nities.*

16 (2) *INVESTMENT STRATEGY.*—*The quality of the*
17 *entity’s investment strategy submitted in accordance*
18 *with subsection (a)(5) and the extent to which the in-*
19 *vestment strategy furthers the goals of this Act pursu-*
20 *ant to paragraph (3) of this subsection.*

21 (3) *PUBLIC PURPOSE GOALS.*—*With respect to*
22 *the statement of public purpose goals of the entity*
23 *submitted in accordance with subsection (a)(6), and*
24 *the strategy and measurements included therein—*

1 (A) the extent to which such goals promote
2 community and economic development;

3 (B) the extent to which such goals provide
4 for making qualified investments in low-income
5 communities that further economic development
6 objectives, such as—

7 (i) creating, within 2 years of the com-
8 pletion of the initial such investment, job
9 opportunities, opportunities for ownership,
10 and other economic opportunities within a
11 low-income community, both short-term and
12 of a longer duration;

13 (ii) improving the economic vitality of
14 a low-income community, including stimu-
15 lating other business development;

16 (iii) bringing new income into a low-
17 income community and assisting in the re-
18 vitalization of such community;

19 (iv) converting real property for the
20 purpose of creating a site for business incu-
21 bation and location, or business district re-
22 vitalization;

23 (v) enhancing economic competition,
24 including the advancement of technology;

25 (vi) rural development;

1 (vii) mitigating, rehabilitating, and
2 reusing real property considered subject to
3 the Solid Waste Disposal Act (42 U.S.C.
4 6901 et seq.; commonly referred to as the
5 Resource Conservation and Recovery Act) or
6 restoring coal mine-scarred land;

7 (viii) creation of local wealth through
8 investments in employee stock ownership
9 companies or resident-owned ventures; and

10 (ix) any other objective that the Sec-
11 retary may establish to further the purposes
12 of this Act;

13 (C) the quality of jobs to be created for resi-
14 dents of low-income communities, taking into
15 consideration such factors as the payment of
16 higher wages, job security, employment benefits,
17 opportunity for advancement, and personal asset
18 building;

19 (D) the extent to which achievement of such
20 goals will involve community-based organiza-
21 tions and residents in community development
22 activities; and

23 (E) the extent to which the investments re-
24 ferred to in subparagraph (B) are likely to ben-
25 efit existing small business in low-income com-

1 *munities or will encourage the growth of small*
2 *business in such communities.*

3 (4) *OTHER.*—*Any other criteria that the Sec-*
4 *retary may establish to carry out the purposes of this*
5 *Act.*

6 (e) *FIRST YEAR REQUIREMENTS.*—

7 (1) *NUMERICAL LIMITATION.*—*The number of*
8 *APICs may not, at any time during the 1-year period*
9 *that begins upon the Secretary awarding the first li-*
10 *cence for an APIC under this Act, exceed 15.*

11 (2) *LIMITATION ON ALLOCATION OF AVAILABLE*
12 *CREDIT SUBSIDY.*—*Of the amount of budget authority*
13 *initially made available for allocation under this Act*
14 *for APICs, the amount allocated for any single APIC*
15 *may not exceed 20 percent.*

16 (3) *NATIVE AMERICAN PRIVATE INVESTMENT*
17 *COMPANY.*—*Subject only to the absence of an approv-*
18 *able application from an entity, during the 1-year pe-*
19 *riod referred to in paragraph (1), of the entities se-*
20 *lected and licensed by the Secretary as APICs, at*
21 *least one shall be an entity that has as its primary*
22 *purpose the making of qualified low-income commu-*
23 *nity investments in areas that are within Indian*
24 *country (as such term is defined in section 1151 of*
25 *title 18, United States Code) or within lands that*

1 *have status as Hawaiian home land under section*
2 *204 of the Hawaiian Homes Commission Act, 1920*
3 *(42 Stat. 108) or are acquired pursuant to such Act.*
4 *The Secretary may establish specific selection criteria*
5 *for applicants under this paragraph.*

6 *(f) COMMUNICATIONS BETWEEN HUD AND APPLI-*
7 *CANTS.—*

8 *(1) IN GENERAL.—The Secretary shall set forth*
9 *in regulations the procedures under which HUD and*
10 *applicants for APIC licenses, and others, may com-*
11 *municate. Such regulations shall—*

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

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

22 *(C) restrict HUD officers and employees*
23 *from revealing to any applicant—*

24 *(i) the fact or chances of award of a li-*
25 *cence to such applicant, unless there has*

1 *been a public announcement of the results of*
2 *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) TIMING.—Regulations under this subsection*
13 *may be issued as interim rules for effect on or before*
14 *the 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) INAPPLICABILITY OF DEPARTMENT OF HUD*
21 *ACT PROVISION.—Section 12(e)(2) of the Department*
22 *of Housing and Urban Development Act (42 U.S.C.*
23 *3537a(e)(2)) is amended by inserting before the pe-*
24 *riod at the end the following: “or any license provided*

1 *under the America's Private Investment Companies*
2 *Act*".

3 **SEC. 6. OPERATIONS OF APICS.**

4 *(a) POWERS AND AUTHORITIES.—*

5 *(1) IN GENERAL.—An APIC shall have any pow-*
6 *ers or authorities that—*

7 *(A) the APIC derives from the jurisdiction*
8 *in which it is organized, or that the APIC other-*
9 *wise has;*

10 *(B) may be conferred by a license under*
11 *this Act; and*

12 *(C) the Secretary may prescribe by regula-*
13 *tion.*

14 *(2) NEW MARKET ASSISTANCE.—Nothing in this*
15 *Act shall preclude an APIC or its investors from re-*
16 *ceiving an allocation of New Market Tax Credits (to*
17 *the extent such credits are established under Federal*
18 *law) if the APIC satisfies any applicable terms and*
19 *conditions under the Internal Revenue Code of 1986.*

20 *(b) INVESTMENT LIMITATIONS.—*

21 *(1) QUALIFIED LOW-INCOME COMMUNITY INVEST-*
22 *MENTS.—Substantially all investments that an APIC*
23 *makes shall be qualified low-income community in-*
24 *vestments if the investments are financed with—*

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

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

6 (C) the use of private equity capital, as de-
7 termined by the Secretary, in an amount speci-
8 fied in the APIC's license.

9 (2) *SINGLE BUSINESS INVESTMENTS.*—An APIC
10 shall not, as a matter of sound financial practice, in-
11 vest in any one business an amount that exceeds an
12 amount equal to 35 percent of the sum of—

13 (A) the APIC's private equity capital; plus

14 (B) an amount equal to the percentage limit
15 that the Secretary determines that an APIC may
16 have outstanding at any one time, under sub-
17 section (c)(2)(A).

18 (c) *BORROWING POWERS; QUALIFIED DEBENTURES.*—

19 (1) *ISSUANCE.*—An APIC may issue qualified
20 debentures. The Secretary shall, by regulation, specify
21 the terms and requirements for debentures to be con-
22 sidered qualified debentures for purposes of this Act,
23 except that the term to maturity of any qualified de-
24 benture may not exceed 21 years and each qualified
25 debenture shall bear interest during all or any part

1 of that time period at a rate or rates approved by the
2 Secretary.

3 (2) *LEVERAGE LIMITS.*—In general, as a matter
4 of sound financial management practices—

5 (A) *the total amount of qualified debentures*
6 *that an APIC issues under this Act that an*
7 *APIC may have outstanding at any one time*
8 *shall not exceed an amount equal to 200 percent*
9 *of the private equity capital of the APIC, as de-*
10 *termined by the Secretary; and*

11 (B) *an APIC shall not have more than*
12 *\$300,000,000 in face value of qualified debent-*
13 *tures issued under this Act outstanding at any*
14 *one time.*

15 (3) *REPAYMENT.*—

16 (A) *CONDITION OF BUSINESS WIND-UP.*—An
17 *APIC shall have repaid, or have otherwise been*
18 *relieved of indebtedness, with respect to any in-*
19 *terest or principal amounts of borrowings under*
20 *this subsection no less than 2 years before the*
21 *APIC may dissolve or otherwise complete the*
22 *wind-up of its business.*

23 (B) *TIMING.*—An APIC may repay any in-
24 *terest or principal amounts of borrowings under*
25 *this subsection at any time: Provided, That the*

1 *repayment of such amounts shall not relieve an*
2 *APIC of any duty otherwise applicable to the*
3 *APIC under this Act, unless the Secretary orders*
4 *such relief.*

5 *(C) USE OF INVESTMENT PROCEEDS BE-*
6 *FORE REPAYMENT.—Until an APIC has repaid*
7 *all interest and principal amounts on APIC bor-*
8 *rowings under this subsection, an APIC may use*
9 *the proceeds of investments, in accordance with*
10 *regulations issued by the Secretary, only to—*

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

14 *(ii) pay for the reasonable administra-*
15 *tive expenses of the APIC;*

16 *(iii) purchase Treasury securities;*

17 *(iv) repay interest and principal*
18 *amounts on APIC borrowings under this*
19 *subsection;*

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

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

1 (D) *USE OF INVESTMENT PROCEEDS AFTER*
2 *REPAYMENT.*—*After an APIC has repaid all in-*
3 *terest and principal amounts on APIC bor-*
4 *rowings under this subsection, and subject to*
5 *continuing compliance with subsection (a), the*
6 *APIC may use the proceeds from investments to*
7 *make interest, dividend, or other distributions to*
8 *or on behalf of investors in the nature of returns*
9 *on capital, or the withdrawal of private equity*
10 *capital, without regard to subparagraph (C) but*
11 *in conformity with the APIC’s investment strat-*
12 *egy and statement of public purpose goals.*

13 (d) *REUSE OF QUALIFIED DEBENTURE PROCEEDS.*—
14 *An APIC may use the proceeds of sale of Treasury securities*
15 *purchased under subsection (c)(3)(C)(iii) to make qualified*
16 *low-income community investments, subject to the Sec-*
17 *retary’s approval. In making the request for the Secretary’s*
18 *approval, the APIC shall follow the procedures applicable*
19 *to an APIC’s request for HUD guarantee action, as the Sec-*
20 *retary may modify such procedures for implementation of*
21 *this subsection. Such procedures shall include the descrip-*
22 *tion and certifications that an APIC must include in all*
23 *requests for guarantee action, and the environmental certifi-*
24 *cation applicable to initial expenditures for a project or ac-*
25 *tivity.*

1 (e) *ANTIPIRATING.*—Notwithstanding any other provi-
2 sion of law, an APIC may not use any private equity cap-
3 ital required to be contributed under this Act, or the pro-
4 ceeds from the sale of any qualified debenture under this
5 Act, to make an investment, as determined by the Secretary,
6 to assist directly in the relocation of any industrial or com-
7 mercial plant, facility, or operation, from 1 area to another
8 area, if the relocation is likely to result in a significant
9 loss of employment in the labor market area from which
10 the relocation occurs.

11 (f) *EXCLUSION OF APIC FROM DEFINITION OF DEBT-*
12 *OR UNDER BANKRUPTCY PROVISIONS.*—Section 109(b)(2)
13 of title 11, United States Code, is amended by inserting
14 before “credit union” the following: “America’s Private In-
15 vestment Company licensed under the America’s Private
16 Investment Companies Act,”.

17 **SEC. 7. CREDIT ENHANCEMENT BY THE FEDERAL GOVERN-**
18 **MENT.**

19 (a) *ISSUANCE AND GUARANTEE OF QUALIFIED DE-*
20 *BENTURES.*—

21 (1) *AUTHORITY.*—To the extent consistent with
22 the Federal Credit Reform Act of 1990, the Secretary
23 is authorized to make commitments to guarantee and
24 guarantee the timely payment of all principal and
25 interest as scheduled on qualified debentures issued by

1 *APICs. Such commitments and guarantees may only*
2 *be made in accordance with the terms and conditions*
3 *established under paragraph (2).*

4 (2) *TERMS AND CONDITIONS.*—*The Secretary*
5 *shall establish such terms and conditions as the Sec-*
6 *retary determines to be appropriate for commitments*
7 *and guarantees under this subsection, including terms*
8 *and conditions relating to amounts, expiration, num-*
9 *ber, priorities of repayment, security, collateral, am-*
10 *ortization, payment of interest (including the timing*
11 *thereof), and fees and charges. The terms and condi-*
12 *tions applicable to any particular commitment or*
13 *guarantee may be established in documents that the*
14 *Secretary approves for such commitment or guar-*
15 *antee.*

16 (3) *SENIORITY.*—*Notwithstanding any other pro-*
17 *vision of Federal law or any law or the constitution*
18 *of any State, qualified debentures guaranteed under*
19 *this subsection by the Secretary shall be senior to any*
20 *other debt obligation, equity contribution or earnings,*
21 *or the distribution of dividends, interest, or other*
22 *amounts, of an APIC.*

23 (b) *ISSUANCE OF TRUST CERTIFICATES.*—*The Sec-*
24 *retary, or an agent or entity selected by the Secretary, is*
25 *authorized to issue trust certificates representing ownership*

1 *of all or a fractional part of guaranteed qualified debentures*
2 *issued by APICs and held in trust.*

3 *(c) GUARANTEE OF TRUST CERTIFICATES.—*

4 *(1) IN GENERAL.—The Secretary is authorized,*
5 *upon such terms and conditions as the Secretary de-*
6 *termines to be appropriate, to guarantee the timely*
7 *payment of the principal of and interest on trust cer-*
8 *tificates issued by the Secretary, or an agent or other*
9 *entity, for purposes of this section. Such guarantee*
10 *shall be limited to the extent of principal and interest*
11 *on the guaranteed qualified debentures which compose*
12 *the trust.*

13 *(2) SUBSTITUTION OPTION.—The Secretary shall*
14 *have the option to replace in the corpus of the trust*
15 *any prepaid or defaulted qualified debenture with a*
16 *debenture, another full faith and credit instrument, or*
17 *any obligations of the United States, that may rea-*
18 *sonably substitute for such prepaid or defaulted quali-*
19 *fied debenture.*

20 *(3) PROPORTIONATE REDUCTION OPTION.—In*
21 *the event that the Secretary elects not to exercise the*
22 *option under paragraph (2), and a qualified deben-*
23 *ture in such trust is prepaid, or in the event of de-*
24 *fault of a qualified debenture, the guarantee of timely*
25 *payment of principal and interest on the trust certifi-*

1 *cate shall be reduced in proportion to the amount of*
2 *principal and interest that such prepaid qualified de-*
3 *benture represents in the trust. Interest on prepaid or*
4 *defaulted qualified debentures shall accrue and be*
5 *guaranteed by the Secretary only through the date of*
6 *payment of the guarantee. During the term of a trust*
7 *certificate, it may be called for redemption due to*
8 *prepayment or default of all qualified debentures that*
9 *are in the corpus of the trust.*

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

15 *(e) SUBROGATION AND LIENS.—*

16 *(1) SUBROGATION.—In the event the Secretary*
17 *pays a claim under a guarantee issued under this sec-*
18 *tion, the Secretary shall be subrogated fully to the*
19 *rights satisfied by such payment.*

20 *(2) PRIORITY OF LIENS.—No State or local law,*
21 *and no Federal law, shall preclude or limit the exer-*
22 *cise by the Secretary of its ownership rights in the de-*
23 *bentures in the corpus of a trust under this section.*

24 *(f) REGISTRATION.—*

1 (1) *IN GENERAL.*—*The Secretary shall provide*
2 *for a central registration of all trust certificates*
3 *issued pursuant to this section.*

4 (2) *AGENTS.*—*The Secretary may contract with*
5 *an agent or agents to carry out on behalf of the Sec-*
6 *retary the pooling and the central registration func-*
7 *tions of this section notwithstanding any other provi-*
8 *sion of law, including maintenance on behalf of and*
9 *under the direction of the Secretary, such commercial*
10 *bank accounts or investments in obligations of the*
11 *United States as may be necessary to facilitate trusts*
12 *backed by qualified debentures guaranteed under this*
13 *Act and the issuance of trust certificates to facilitate*
14 *formation of the corpus of the trusts. The Secretary*
15 *may require such agent or agents to provide a fidelity*
16 *bond or insurance in such amounts as the Secretary*
17 *determines to be necessary to protect the interests of*
18 *the Government.*

19 (3) *FORM.*—*Book-entry or other electronic forms*
20 *of registration for trust certificates under this Act are*
21 *authorized.*

22 (g) *TIMING OF ISSUANCE OF GUARANTEES OF QUALI-*
23 *FIED DEBENTURES AND TRUST CERTIFICATES.*—*The Sec-*
24 *retary may, from time to time in the Secretary's discretion,*

1 *exercise the authority to issue guarantees of qualified debentures under this Act or trust certificates under this Act.*

3 **SEC. 8. APIC REQUESTS FOR GUARANTEE ACTIONS.**

4 *(a) IN GENERAL.—The Secretary may issue a guarantee under this Act for a qualified debenture that an APIC intends to issue only pursuant to a request to the Secretary by the APIC for such guarantee that is made in accordance with regulations governing the content and procedures for such requests, that the Secretary shall prescribe. Such regulations shall provide that each such request shall include—*

11 *(1) a description of the manner in which the APIC intends to use the proceeds from the qualified debenture;*

14 *(2) a certification by the APIC that the APIC is in substantial compliance with—*

16 *(A) this Act and other applicable laws, including any requirements established under this Act by the Secretary;*

19 *(B) all terms and conditions of its license, any cease-and-desist order issued under section 10, and of any penalty or condition that may have arisen from examination or monitoring by the Secretary or otherwise, including the satisfaction of any financial audit exception that may have been outstanding; and*

1 (C) all requirements relating to the alloca-
2 tion and use of New Markets Tax Credits, to the
3 extent such credits are established under Federal
4 law; and

5 (3) any other information or certification that
6 the Secretary considers appropriate.

7 (b) *REQUESTS FOR GUARANTEE OF QUALIFIED DE-*
8 *BENTURES THAT INCLUDE FUNDING FOR INITIAL EXPEND-*
9 *ITURE FOR A PROJECT OR ACTIVITY.*—In addition to the
10 description and certification that an APIC is required to
11 supply in all requests for guarantee action under subsection
12 (a), in the case of an APIC's request for a guarantee that
13 includes a qualified debenture, the proceeds of which the
14 APIC expects to be used as its initial expenditure for a
15 project or activity in which the APIC intends to invest, and
16 the expenditure for which would require an environmental
17 assessment under the National Environmental Policy Act
18 of 1969 and other related laws that further the purposes
19 of such Act, such request for guarantee action shall include
20 evidence satisfactory to the Secretary of the certification of
21 the completion of environmental review of the project or ac-
22 tivity required of the cognizant State or local government
23 under subsection (c). If the environmental review responsi-
24 bility for the project or activity has not been assumed by
25 a State or local government under subsection (c), then the

1 *Secretary shall be responsible for carrying out the applica-*
2 *ble responsibilities under the National Environmental Pol-*
3 *icy Act of 1969 and other provisions of law that further*
4 *the purposes of such Act that relate to the project or activity,*
5 *and the Secretary shall execute such responsibilities before*
6 *acting on the APIC's request for the guarantee that is cov-*
7 *ered by this subsection.*

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

10 (1) *EXECUTION OF RESPONSIBILITY BY THE SEC-*
11 *RETARY.—This subsection shall apply to guarantees*
12 *by the Secretary of qualified debentures under this*
13 *Act, the proceeds of which would be used in connec-*
14 *tion with qualified low-income community invest-*
15 *ments of APICs under this Act.*

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

18 (A) *GUARANTEE OF QUALIFIED DEBEN-*
19 *TURES.—In order to assure that the policies of*
20 *the National Environmental Policy Act of 1969*
21 *and other provisions of law that further the pur-*
22 *poses of such Act (as specified in regulations*
23 *issued by the Secretary) are most effectively im-*
24 *plemented in connection with the expenditure of*
25 *funds under this Act, and to assure to the public*

1 *undiminished protection of the environment, the*
2 *Secretary may, under such regulations, in lieu of*
3 *the environmental protection procedures other-*
4 *wise applicable, provide for the guarantee of*
5 *qualified debentures, any part of the proceeds of*
6 *which are to fund particular qualified low-in-*
7 *come community investments of APICs under*
8 *this Act, if a State or unit of general local gov-*
9 *ernment, as designated by the Secretary in ac-*
10 *cordance with regulations issued by the Sec-*
11 *retary, assumes all of the responsibilities for en-*
12 *vironmental review, decisionmaking, and action*
13 *pursuant to the National Environmental Policy*
14 *Act of 1969 and such other provisions of law*
15 *that further such Act as the regulations of the*
16 *Secretary specify, that would otherwise apply to*
17 *the Secretary were the Secretary to undertake the*
18 *funding of such investments as a Federal action.*

19 *(B) IMPLEMENTATION.—The Secretary shall*
20 *issue regulations to carry out this subsection*
21 *only after consultation with the Council on En-*
22 *vironmental Quality. Such regulations shall—*

23 *(i) specify any other provisions of law*
24 *which further the purposes of the National*
25 *Environmental Policy Act of 1969 and to*

1 *which the assumption of responsibility as*
2 *provided in this subsection applies;*

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

7 *(iii) specify the purposes for which*
8 *funds may be committed without regard to*
9 *the procedure established under paragraph*
10 *(3);*

11 *(iv) provide for monitoring of the per-*
12 *formance of environmental reviews under*
13 *this subsection;*

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

17 *(vi) subject to the discretion of the Sec-*
18 *retary, provide for suspension or termi-*
19 *nation by the Secretary of the assumption*
20 *under subparagraph (A).*

21 (C) *RESPONSIBILITIES OF STATES AND*
22 *UNITS OF GENERAL LOCAL GOVERNMENT.—The*
23 *Secretary's duty under subparagraph (B) shall*
24 *not be construed to limit any responsibility as-*
25 *sumed by a State or unit of general local govern-*

1 *ment with respect to any particular request for*
2 *guarantee under subparagraph (A), or the use of*
3 *funds for a qualified investment.*

4 (3) *PROCEDURE.*—*Subject to compliance by the*
5 *APIC with the requirements of this title, the Sec-*
6 *retary shall approve the request for guarantee of a*
7 *qualified debenture, any part of the proceeds of which*
8 *is to fund particular qualified low-income community*
9 *investments of an APIC under this Act, that is subject*
10 *to the procedures authorized by this subsection only if,*
11 *not less than 15 days prior to such approval and*
12 *prior to any commitment of funds to such investment*
13 *(except for such purposes specified in the regulations*
14 *issued under paragraph (2)(B)), the APIC submits to*
15 *the Secretary a request for guarantee of a qualified*
16 *debenture that is accompanied by evidence of a cer-*
17 *tification of the State or unit of general local govern-*
18 *ment which meets the requirements of paragraph (4).*
19 *The approval by the Secretary of any such certifi-*
20 *cation shall be deemed to satisfy the Secretary's re-*
21 *sponsibilities pursuant to paragraph (1) under the*
22 *National Environmental Policy Act of 1969 and such*
23 *other provisions of law as the regulations of the Sec-*
24 *retary specify insofar as those responsibilities relate*
25 *to the guarantees of qualified debentures, any parts of*

1 *the proceeds of which are to fund such investments,*
2 *which are covered by such certification.*

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

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

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

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

14 (D) *specify that the certifying officer—*

15 (i) *consents to assume the status of a*
16 *responsible Federal official under the Na-*
17 *tional Environmental Policy Act of 1969*
18 *and each provision of law specified in regu-*
19 *lations issued by the Secretary insofar as*
20 *the provisions of such Act or other such pro-*
21 *vision of law apply pursuant to paragraph*
22 *(2); and*

23 (ii) *is authorized and consents on be-*
24 *half of the State or unit of general local*
25 *government and himself or herself to accept*

1 *the jurisdiction of the Federal courts for the*
2 *purpose of enforcement of the responsibil-*
3 *ities as such an official.*

4 **SEC. 9. EXAMINATION AND MONITORING OF APICS.**

5 *(a) IN GENERAL.—The Secretary shall, under regula-*
6 *tions, through audits, performance agreements, license con-*
7 *ditions, or otherwise, examine and monitor the operations*
8 *and activities of APICs for compliance with sound finan-*
9 *cial management practices, and for satisfaction of the pro-*
10 *gram and procedural goals of this Act and other related*
11 *Acts. The Secretary may undertake any responsibility*
12 *under this section in cooperation with an APIC liaison*
13 *committee, or any agency that is a member of such a com-*
14 *mittee, or other agency.*

15 *(b) MONITORING, UPDATING, AND PROGRAM RE-*
16 *VIEW.—*

17 *(1) REPORTING AND UPDATING.—The Secretary*
18 *shall establish such annual or more frequent reporting*
19 *requirements for APICs, and such requirements for*
20 *the updating of the statement of public purpose goals,*
21 *investment strategy (including the benchmarks in*
22 *such strategy), and other documents that may have*
23 *been used in the license application process under this*
24 *Act, as the Secretary determines necessary to assist*

1 *the Secretary in monitoring the compliance and per-*
2 *formance of APICs.*

3 (2) *ANNUAL AUDITS.—The Secretary shall re-*
4 *quire each APIC to have an independent audit con-*
5 *ducted annually of the operations of the APIC. The*
6 *Secretary, in consultation with the Administrator*
7 *and the Secretary of the Treasury, shall establish re-*
8 *quirements and standards for such audits, including*
9 *requirements that such audits be conducted in accord-*
10 *ance with generally accepted accounting principles,*
11 *that the APIC submit the results of the audit to Sec-*
12 *retary, and that specify the information to be sub-*
13 *mitted.*

14 (3) *EXAMINATIONS.—The Secretary shall, no less*
15 *often than once every 2 years, examine the operations*
16 *and portfolio of each APIC licensed under this Act for*
17 *compliance with sound financial management prac-*
18 *tices, and for compliance with this Act.*

19 (4) *EXAMINATION STANDARDS.—*

20 (A) *SOUND FINANCIAL MANAGEMENT PRAC-*
21 *TICES.—The Secretary shall examine each APIC*
22 *to ensure, as a matter of sound financial man-*
23 *agement practices, substantial compliance with*
24 *this and other applicable laws, including Federal*
25 *executive orders, Department of Treasury and*

1 *Office of Management and Budget guidance, cir-*
2 *culars, and application and licensing require-*
3 *ments on a continuing basis. The Secretary may,*
4 *by regulation, establish any additional standards*
5 *for sound financial management practices, in-*
6 *cluding standards that address solvency and fi-*
7 *nancial exposure.*

8 *(B) PERFORMANCE AND OTHER EXAMINA-*
9 *TIONS.—The Secretary shall monitor each*
10 *APIC’s progress in meeting the goals in the*
11 *APIC’s statement of public purpose goals, exe-*
12 *cuting the APIC’s investment strategy, and other*
13 *matters.*

14 *(c) INSPECTOR GENERAL RESPONSIBILITY.—In car-*
15 *rying out monitoring of HUD’s responsibilities under this*
16 *Act and for purposes of ensuring that the program under*
17 *this Act is operated in accordance with sound financial*
18 *management practices, the Inspector General of the Depart-*
19 *ment of Housing and Urban Development shall consult with*
20 *the Inspector General of the Department of the Treasury*
21 *and the Inspector General of the Small Business Adminis-*
22 *tration, as appropriate, and may enter into such agree-*
23 *ments and memoranda of understanding as may be nec-*
24 *essary to obtain the cooperation of the Inspectors General*

1 *of the Department of the Treasury and the Small Business*
2 *Administration in carrying out such function.*

3 (d) *ANNUAL REPORT BY SECRETARY.*—*The Secretary*
4 *shall submit a report to the Congress annually regarding*
5 *the operations, activities, financial health, and achieve-*
6 *ments of the APIC program under this Act. The report shall*
7 *list each investment made by an APIC and include a sum-*
8 *mary of the examinations conducted under subsection*
9 *(b)(3), the guarantee actions of HUD, and any regulatory*
10 *or policy actions taken by HUD. The report shall distin-*
11 *guish recently licensed APICs from APICs that have held*
12 *licenses for a longer period for purposes of indicating pro-*
13 *gram activities and performance.*

14 (e) *GAO REPORT.*—

15 (1) *REQUIREMENT.*—*Not later than 2 years after*
16 *the date of the enactment of this Act, the Comptroller*
17 *General of the United States shall submit a report to*
18 *the Congress regarding the operation of the program*
19 *under this Act for licensing and guarantees for*
20 *APICs.*

21 (2) *CONTENTS.*—*The report shall include—*

22 (A) *an analysis of the operations and moni-*
23 *toring by HUD of the APIC program under this*
24 *Act;*

1 (B) the administrative and capacity needs
2 of HUD required to ensure the integrity of the
3 program;

4 (C) the extent and adequacy of any credit
5 subsidy appropriated for the program; and

6 (D) the management of financial risk and
7 liability of the Federal Government under the
8 program.

9 **SEC. 10. PENALTIES.**

10 (a) *VIOLATIONS SUBJECT TO PENALTY.*—The Sec-
11 retary may impose a penalty under this subsection on any
12 APIC or manager of an APIC that, by any act, practice,
13 or failure to act, engages in fraud, mismanagement, or non-
14 compliance with this Act, the regulations under this Act,
15 or a condition of the APIC’s license under this Act. The
16 Secretary shall, by regulation, identify, by generic descrip-
17 tion of a role or responsibilities, any manager of an APIC
18 that is subject to a penalty under this section.

19 (b) *PENALTIES REQUIRING NOTICE AND AN OPPOR-*
20 *TUNITY TO RESPOND.*—If, after notice in writing to an
21 APIC or the manager of an APIC that the APIC or man-
22 ager has engaged in any action, practice, or failure to act
23 that, under subsection (a), is subject to a penalty, and after
24 an opportunity for the APIC or manager to respond to the
25 notice, the Secretary determines that the APIC or manager

1 *engaged in such action or failure to act, the Secretary may,*
2 *in addition to other penalties imposed—*

3 *(1) assess a civil money penalty, except that any*
4 *civil money penalty under this subsection shall be in*
5 *an amount not exceeding \$10,000;*

6 *(2) issue an order to cease and desist with re-*
7 *spect to such action, practice, or failure to act of the*
8 *APIC or manager;*

9 *(3) suspend, or condition the use of, the APIC's*
10 *license, including deferring, for the period of the sus-*
11 *pension, any commitment to guarantee any new*
12 *qualified debenture of the APIC, except that any sus-*
13 *pension or condition under this paragraph may not*
14 *exceed 90 days; and*

15 *(4) impose any other penalty that the Secretary*
16 *determines to be less burdensome to the APIC than a*
17 *penalty under subsection (c).*

18 *(c) PENALTIES REQUIRING NOTICE AND HEARING.—*
19 *If, after notice in writing to an APIC or the manager of*
20 *an APIC that an APIC or manager has engaged in any*
21 *action, practice, or failure to act that, under subsection (a),*
22 *is subject to a penalty, and after an opportunity for admin-*
23 *istrative hearing, the Secretary determines that the APIC*
24 *or manager engaged in such action or failure to act, the*
25 *Secretary may—*

1 (1) *assess a civil money penalty against the*
2 *APIC or a manager in any amount;*

3 (2) *require the APIC to divest any interest in an*
4 *investment, on such terms and conditions as the Sec-*
5 *retary may impose; or*

6 (3) *revoke the APIC's license.*

7 (d) *EFFECTIVE DATE OF PENALTIES.—*

8 (1) *PRIOR NOTICE REQUIREMENT.—Except as*
9 *provided in paragraph (2) of this subsection, a pen-*
10 *alty under subsection (b) or (c) shall not be due and*
11 *payable and shall not otherwise take effect or be sub-*
12 *ject to enforcement by an order of a court, before no-*
13 *tice of the penalty is published in the Federal Reg-*
14 *ister.*

15 (2) *CEASE-AND-DESIST ORDERS AND SUSPEN-*
16 *SION OR CONDITIONING OF LICENSE.—In the case of*
17 *a cease-and-desist order under subsection (b)(2) or the*
18 *suspension or conditioning of an APIC's license under*
19 *subsection (b)(3), the following procedures shall apply:*

20 (A) *ACTION WITHOUT PUBLISHED NO-*
21 *TICE.—The Secretary may order an APIC or*
22 *manager to cease and desist from an action,*
23 *practice, or failure to act or may suspend or*
24 *condition an APIC's license, for not more than*
25 *45 days without prior publication of notice in*

1 *the Federal Register, but such cease-and-desist*
2 *order or suspension or conditioning shall take ef-*
3 *fect only after the Secretary has issued a written*
4 *notice (which may include a writing in elec-*
5 *tronic form) of such action to the APIC. Not-*
6 *withstanding subsection (b), such written notice*
7 *shall be effective without regard to whether the*
8 *APIC has been accorded an opportunity to re-*
9 *spond. Upon such notice, such cease-and-desist*
10 *order or suspension or conditioning shall be sub-*
11 *ject to enforcement by an order of a court.*

12 *(B) PUBLICATION OF NOTICE OF SUSPEN-*
13 *SION OR CONDITIONING OF LICENSE.—Upon a*
14 *suspension or conditioning of a license taking ef-*
15 *fect pursuant to subparagraph (A), the Secretary*
16 *shall promptly cause a notice of suspension or*
17 *conditioning of such license for a period of not*
18 *more than 90 days to be published in the Federal*
19 *Register. The Secretary shall provide the APIC*
20 *an opportunity to respond to such notice. For*
21 *purposes of the determining the duration of the*
22 *period of any suspension or conditioning under*
23 *this subparagraph, the first day of such period*
24 *shall be the day of issuance of the written notice*

1 *under this paragraph of the suspension or condi-*
2 *tioning.*

3 (C) *REVOCATION OF LICENSE.*—*During the*
4 *period of the suspension or conditioning of an*
5 *APIC’s license, the Secretary may take action*
6 *under subsection (c)(3) to revoke the license of*
7 *the APIC, in accordance with the procedures ap-*
8 *plicable to such subsection. Notwithstanding any*
9 *other provision of this section, if the Secretary*
10 *takes such action, the Secretary may extend the*
11 *suspension or conditioning of the APIC’s license,*
12 *for one or more periods of not more than 90 days*
13 *each, by causing notice of such action to be pub-*
14 *lished in the Federal Register—*

15 *(i) for the first such extension, before*
16 *the expiration of the period under subpara-*
17 *graph (B); and*

18 *(ii) for any subsequent extension, be-*
19 *fore the expiration of the preceding exten-*
20 *sion period under this subparagraph.*

21 (D) *TERM OF EFFECTIVENESS.*—*A cease-and-de-*
22 *sist order or the suspension or conditioning of an*
23 *APIC’s license by the Secretary under this paragraph*
24 *shall remain in effect in accordance with the terms of*
25 *the order, suspension, or conditioning until final ad-*

1 *judication in any action undertaken to challenge the*
2 *order, or the suspension or conditioning, or the rev-*
3 *ocation, of an APIC's license.*

4 **SEC. 11. EFFECTIVE DATE.**

5 *(a) IN GENERAL.—Except as provided in subsection*
6 *(b), this Act shall take effect upon the expiration of the 6-*
7 *month period beginning on the date of the enactment of this*
8 *Act.*

9 *(b) ISSUANCE OF REGULATIONS AND GUIDELINES.—*
10 *Any authority under this Act of the Secretary, the Adminis-*
11 *trator, and the Secretary of the Treasury to issue regula-*
12 *tions, standards, guidelines, or licensing requirements, and*
13 *any authority of such officials to consult or enter into agree-*
14 *ments or memoranda of understanding regarding such*
15 *issuance, shall take effect on the date of the enactment of*
16 *this Act.*

17 **SEC. 12. SUNSET.**

18 *After the expiration of the 5-year period beginning*
19 *upon the date that the Secretary awards the first license*
20 *for an APIC under this Act—*

21 *(1) the Secretary may not license any APIC; and*
22 *(2) no amount may be appropriated for the costs*
23 *(as such term is defined in section 502 of the Federal*
24 *Credit Reform Act of 1990 (2 U.S.C. 661c)) of any*

1 *guarantee under this Act for any debenture issued by*
2 *an APIC.*

3 *This section may not be construed to prohibit, limit, or af-*
4 *fect the award, allocation, or use of any budget authority*
5 *for the costs of such guarantees that is appropriated before*
6 *the expiration of such period.*

Union Calendar No. 351

106TH CONGRESS
2D SESSION

H. R. 2764

[Report No. 106-638]

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.

MAY 23, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed