

106TH CONGRESS
1ST SESSION

H. R. 2848

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1999

Mr. WATTS of Oklahoma (for himself, Mr. TALENT, Mr. LEACH, and Mr. BAKER) (all by request) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Ways and Means, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “New Markets Initiative
3 Act of 1999”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—NEW MARKETS VENTURE CAPITAL PROGRAM

- Sec. 101. New Markets Venture Capital Program.
- Sec. 102. Conforming amendments.
- Sec. 103. Bankruptcy exemption for New Markets Venture Capital companies.
- Sec. 104. Federal Savings Associations.

TITLE II—SMALL BUSINESS LOANS

- Sec. 201. Participation rate.
- Sec. 202. Guarantee fee.
- Sec. 203. Guarantee reduction.

TITLE III—AMERICA’S PRIVATE INVESTMENT COMPANIES

- Sec. 301. Congressional findings and purposes.
- Sec. 302. Definitions.
- Sec. 303. Authorization.
- Sec. 304. Selection of APICs.
- Sec. 305. Operations of APICs.
- Sec. 306. Credit enhancement by the Federal Government.
- Sec. 307. APIC requests for guarantee actions.
- Sec. 308. Examination and monitoring of APICs.
- Sec. 309. Incentives and penalties.

TITLE IV—NEW MARKETS CREDIT

- Sec. 401. New markets tax credit.

6 **TITLE I—NEW MARKETS**
7 **VENTURE CAPITAL PROGRAM**

8 **SEC. 101. NEW MARKETS VENTURE CAPITAL PROGRAM.**

9 Title III of the Small Business Investment Act of
10 1958 is amended—

1 (1) in the heading, by striking “SMALL BUSI-
2 NESS INVESTMENT COMPANIES” and insert-
3 ing “INVESTMENT DIVISION PROGRAMS”;

4 (2) by inserting before the heading for section
5 301 the following:

6 “PART A—SMALL BUSINESS INVESTMENT COMPANIES”;

7 and

8 (3) by adding at the end the following:

9 “PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

10 **“SEC. 350. DEFINITIONS.**

11 “In this part—

12 “(1) the term ‘New Markets Venture Capital
13 company’ means a company that—

14 “(A) has been approved by the Administra-
15 tion under section 353(e) to operate under the
16 New Markets Venture Capital Program; and

17 “(B) has entered into a participation
18 agreement with the Administration; and

19 “(2) the term ‘low- or moderate-income geo-
20 graphic area’ means—

21 “(A) a census tract, or the equivalent
22 county division as defined by the Bureau of the
23 Census for purposes of defining poverty areas,
24 in which—

1 “(i) the poverty rate is not less than
2 20 percent; or

3 “(ii) in the case of a census tract or
4 division located within a metropolitan area,
5 the median family income for such tract or
6 division does not exceed the greater of 80
7 percent of the statewide median family in-
8 come or 80 percent of the metropolitan-
9 area median family income: or

10 “(iii) in the case of a census tract or
11 division not located within a metropolitan
12 area, the median family income for such
13 tract or division does not exceed 80 per-
14 cent of the statewide median family in-
15 come; and

16 “(B) any area located within—

17 “(i) a HUBZone (as defined in sec-
18 tion 126.103 of title 13, Code of Federal
19 Regulations);

20 “(ii) an Urban Empowerment Zone or
21 an Urban Enterprise Community, as des-
22 ignated by the Secretary of the Depart-
23 ment of Housing and Urban Development;
24 or

1 “(iii) a rural Empowerment Zone or a
2 Rural Enterprise Community, as des-
3 ignated by the Secretary of the Depart-
4 ment of Agriculture; and

5 “(3) the term ‘participation agreement’ means
6 an agreement between the Administration and a
7 New Markets Venture Capital company—

8 “(A) detailing the company’s operating
9 plan and investment criteria; and

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

14 **“SEC. 351. PURPOSES.**

15 “The purposes of the New Markets Venture Capital
16 Program are—

17 “(1) to encourage venture capital investment in
18 smaller enterprises located in urban and rural areas;
19 and

20 “(2) to establish a venture capital program to
21 be administered by the Small Business
22 Administration—

23 “(A) to enter into a participation agree-
24 ment with New Markets Venture Capital com-
25 panies;

1 “(B) to guarantee debentures of New Mar-
2 kets Venture Capital companies to enable each
3 such company to make venture capital invest-
4 ments in smaller enterprises in urban and rural
5 areas; and

6 “(C) to make grants to New Markets Ven-
7 ture Capital companies for the purpose of pro-
8 viding marketing, management, and technical
9 assistance to smaller enterprises financed, or
10 expected to be financed, by such company.

11 **“SEC. 352. ESTABLISHMENT OF PROGRAM.**

12 “The Administration shall establish a New Markets
13 Venture Capital Program, under which the Administration
14 may—

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

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

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

1 **“SEC. 353. SELECTION OF NEW MARKETS VENTURE CAP-**
2 **ITAL COMPANIES.**

3 “(a) **ELIGIBILITY.**—A company shall be eligible for
4 participation in the New Markets Venture Capital Pro-
5 gram if—

6 “(1) it is a newly formed for-profit entity or a
7 newly formed for-profit subsidiary of an existing en-
8 tity; and

9 “(2) it has a management team with experience
10 in community development financing or venture cap-
11 ital financing.

12 “(b) **APPLICATION.**—To participate in the New Mar-
13 kets Venture Capital Program, an eligible company shall
14 submit an application to the Administration that
15 includes—

16 “(1) a business plan describing how the com-
17 pany intends to make successful venture capital in-
18 vestments in low- or moderate-income geographic
19 areas;

20 “(2) information regarding the qualifications of
21 the company’s management;

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

24 “(4) a description of how the company will use
25 the grant funds provided under this part to provide

1 marketing, management, and technical assistance to
2 smaller enterprises;

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

7 “(6) information regarding the management
8 and financial strength of any parent firm, affiliated
9 firm, or any other firm essential to the success of
10 the company’s business plan; and

11 “(7) such other information as the Administra-
12 tion may require.

13 “(c) CONDITIONAL APPROVAL.—

14 “(1) IN GENERAL.—From among companies
15 submitting applications under subsection (b), the
16 Administration shall in accordance with this sub-
17 section conditionally approve companies to partici-
18 pate in the New Markets Venture Capital Program.

19 “(2) SELECTION CRITERIA.—In selecting com-
20 panies under paragraph (1), the Administration
21 shall consider the following:

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

24 “(B) The experience and background of
25 the company’s management team.

1 “(C) The need for equity investments in
2 the areas in which the company intends to in-
3 vest.

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

7 “(E) The likelihood that the company will
8 be able to satisfy the conditions under sub-
9 section (d).

10 “(F) The extent to which the activities
11 proposed by the company will expand economic
12 opportunities in the areas in which the company
13 intends to invest.

14 “(G) Any other factors deemed appropriate
15 by the Administration.

16 “(3) NATIONWIDE DISTRIBUTION.—In selecting
17 companies under paragraph (1), the Administration
18 shall ensure that companies are chosen in such a
19 way that investments under the New Markets Ven-
20 ture Capital Program will be made nationwide.

21 “(d) CONDITIONS TO BE MET FOR FINAL AP-
22 PROVAL.—The Administration shall give each condi-
23 tionally approved company a period of time, not to exceed
24 24 months, to satisfy the following conditions:

1 “(1) CAPITAL REQUIREMENT.—Each condi-
2 tionally approved company must raise not less than
3 \$5,000,000 of contributed capital or binding capital
4 commitments from 1 or more investors (other than
5 an agency of the Federal Government) who meet cri-
6 teria established by the Administration; and

7 “(2) NON-ADMINISTRATION RESOURCES FOR
8 TECHNICAL ASSISTANCE.—

9 “(A) IN GENERAL.—In order to provide
10 marketing, management, and technical assist-
11 ance, each conditionally approved company
12 must—

13 “(i) have binding commitments (in
14 cash or in-kind)—

15 “(I) from any sources other than
16 the Administration that meet criteria
17 established by the Administration:

18 “(II) payable or available over a
19 multiyear period acceptable to the Ad-
20 ministration (not to exceed 10 years):
21 and

22 “(III) in an amount equal to 30
23 percent of the capital and commit-
24 ments raised under subsection (d)(1);
25 or

1 “(ii) must have purchased an
2 annuity—

3 “(I) from an insurance company
4 acceptable to the Administration;

5 “(II) using funds (other than the
6 funds raised to satisfy subsection
7 (d)(1)) from any source other than
8 the Administration; and

9 “(III) that yields cash payments
10 over a multiyear period acceptable to
11 the Administration (not to exceed 10
12 years) in an amount equal to 30 per-
13 cent of the capital and commitments
14 raised under subsection (d)(1); or

15 “(iii) must have binding commitments
16 (in cash or in-kind) of the type described
17 in subsection (d)(2)(A)(i) and must have
18 purchased an annuity of the type described
19 in subsection (d)(2)(A)(ii), which in the
20 aggregate make available, over a multiyear
21 period acceptable to the Administration
22 (not to exceed 10 years), an amount equal
23 to 30 percent of the capital and commit-
24 ments raised under subsection (d)(1).

1 “(B) SPECIAL RULE.— On a showing of
2 special circumstances and good cause, the Ad-
3 ministrators may with respect to a particular
4 company waive the requirements of subsection
5 (d)(2) if the Administrator considers the com-
6 pany to have a viable business plan that reason-
7 ably projects the company’s capacity to raise
8 the amount (in cash or in-kind) required under
9 subsection (d)(2)(A).

10 “(e) FINAL APPROVAL.—The Administration shall
11 grant to a conditionally approved company final approval
12 to participate in the New Markets Venture Capital Pro-
13 gram as a New Markets Venture Capital company after
14 the company—

15 “(1) has satisfied the conditions under sub-
16 section (d); and

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

19 **“SEC. 354. DEBENTURES.**

20 “(a) IN GENERAL.—The Administration may, to the
21 extent authorized in advance in appropriations Acts, guar-
22 antee the timely payment of principal and interest as
23 scheduled on debentures issued by New Markets Venture
24 Capital companies.

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

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

11 “(d) MAXIMUM GUARANTEE.—The Administration
12 may provide guarantees under this section for the deben-
13 tures issued by any New Markets Venture Capital com-
14 pany only to the extent that such guarantees do not exceed
15 150 percent of the contributed capital of the company, as
16 determined by the Administration. Contributed capital
17 shall include capital that is deemed to be Federal funds
18 contributed by an investor other than an agency of the
19 Federal Government.

20 **“SEC. 355. TECHNICAL ASSISTANCE GRANTS.**

21 “(a) IN GENERAL.—

22 “(1) AUTHORITY.—In accordance with this sec-
23 tion, the Administration may make grants to each
24 New Markets Venture Capital company to provide
25 marketing, management, and technical assistance for

1 the benefit of smaller enterprises financed, or ex-
2 pected to be financed, by the company.

3 “(2) TERMS.—Grants made under this sub-
4 section shall be made over a multiyear period not to
5 exceed 10 years, under such other terms as the Ad-
6 ministration may require.

7 “(2) GRANT AMOUNT.—

8 “(A) IN GENERAL.—The amount of a
9 grant made under this subsection to each New
10 Markets Venture Capital company shall be
11 equal to the amount resources raised by the
12 company (in cash or in-kind) under section
13 353(d)(2).

14 “(B) SPECIAL RULE.—Notwithstanding
15 subparagraph (A), the Administration may
16 make a grant under this section in an amount
17 other than that set forth in subparagraph (A),
18 if the Administration considers the grant to be
19 in the best interests of the New Markets Ven-
20 ture Capital Program.

21 “(3) PRO RATA REDUCTIONS.—If the amount
22 made available to carry out this section is insuffi-
23 cient for the Administration to provide grants in the
24 amounts provided for in subsection (a)(2), the Ad-
25 ministration shall make pro rata reductions in the

1 amounts otherwise payable to each New Markets
2 Venture Capital company under such subsection.

3 “(b) SUPPLEMENTAL GRANTS.—

4 “(1) IN GENERAL.—The Administration may
5 make supplemental grants to any New Markets Ven-
6 ture Capital company, containing such terms as the
7 Administration may require, to provide additional
8 marketing, management, and technical assistance for
9 the benefit of smaller enterprises financed, or ex-
10 pected to be financed, by the New Markets Venture
11 Capital company.

12 “(2) MATCHING REQUIREMENT.—The Adminis-
13 tration may require, as a condition of any supple-
14 mental grant made under this subsection, that the
15 New Markets Venture Capital company provide from
16 resources (in cash or in-kind) other than those pro-
17 vided by the Administration an amount equal to the
18 amount of the supplemental grant.

19 **“SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFI-**
20 **CATES.**

21 “(a) ISSUANCE.—The Administration may issue trust
22 certificates representing ownership of all or a fractional
23 part of debentures issued by New Markets Venture Cap-
24 ital companies and guaranteed by the Administration
25 under this Act, if such certificates are based on and

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

3 “(b) GUARANTEE.—

4 “(1) IN GENERAL.—The Administration may,
5 under such terms and conditions as the Administra-
6 tion deems appropriate, guarantee the timely pay-
7 ment of the principal of and interest on trust certifi-
8 cates issued by the Administration or its agent for
9 purposes of this section.

10 “(2) LIMITATION.—Guarantees under this sub-
11 section shall be limited to the extent of principal and
12 interest on the guaranteed debentures which com-
13 pose the trust or pool.

14 “(3) PREPAYMENT OR DEFAULT.—In the event
15 that a debenture in a trust or pool is prepaid, or in
16 the event of default of such a debenture, the guar-
17 antee of timely payment of principal and interest on
18 the trust certificates shall be reduced in proportion
19 to the amount of principal and interest such prepaid
20 debenture represents in the trust or pool. Interest on
21 prepaid or defaulted debentures shall accrue and be
22 guaranteed by the Administration only through the
23 date of payment of the guarantee. At any time dur-
24 ing its term, a trust certificate may be called for re-

1 demption due to prepayment or default of all debentures.
2

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

9 “(d) FEES.—The Administration shall not collect a
10 fee for any guarantee under this section, but any agent
11 of the Administration may collect a fee approved by the
12 Administration for the functions described in subsection
13 (f)(2) of this section.

14 “(e) SUBROGATION AND OWNERSHIP RIGHTS.—

15 “(1) SUBROGATION.—In the event the Adminis-
16 tration pays a claim under a guarantee issued under
17 this section, it shall be subrogated fully to the rights
18 satisfied by such payment.

19 “(2) OWNERSHIP RIGHTS.—No Federal, State,
20 or local law shall preclude or limit the exercise by
21 the Administration of its ownership rights in the de-
22 bentures residing in a trust or pool against which
23 trust certificates are issued under this section.

24 “(f) MANAGEMENT AND ADMINISTRATION.—

25 “(1) REGISTRATION.—

1 “(A) IN GENERAL.—The Administration
2 may provide for a central registration of all
3 trust certificates issued under this section.

4 “(B) FORMS OF REGISTRATION.—Nothing
5 in this subsection shall prohibit the use of a
6 book entry or other electronic form of registra-
7 tion for trust certificates.

8 “(2) CONTRACTING OF FUNCTIONS.—

9 “(A) IN GENERAL.—The Administrator
10 may contract with an agent or agents to carry
11 out on behalf of the Administration the pooling
12 and the central registration functions provided
13 for in this section including, notwithstanding
14 any other provision of law—

15 “(i) maintenance on behalf of and
16 under the direction of the Administration,
17 such commercial bank accounts or invest-
18 ments in obligations of the United States
19 as may be necessary to facilitate the cre-
20 ation of trusts or pools backed by deben-
21 tures guaranteed under this Act; and

22 “(ii) the issuance of trust certificates
23 to facilitate the creation of such trusts or
24 pools.

1 “(B) PROTECTION OF THE INTERESTS OF
2 THE UNITED STATES.—Any agent performing
3 functions on behalf of the Administration under
4 this paragraph shall provide a fidelity bond or
5 insurance in such amounts as the Administra-
6 tion determines to be necessary to fully protect
7 the interests of the United States.

8 “(3) REGULATION OF BROKERS AND DEAL-
9 ERS.—The Administrator may regulate brokers and
10 dealers in trust certificates sold under this section.

11 **“SEC. 357. FEES.**

12 “Except as provided in section 356(d), the Adminis-
13 tration may charge such fees as it deems appropriate with
14 respect to any guarantee or grant issued under this part.

15 **“SEC. 358. BANK PARTICIPATION.**

16 “(a) IN GENERAL.—To the extent provided for in
17 subsection (b), any national bank, any member bank of
18 the Federal Reserve System, and any bank that is not a
19 member of such system but which is insured to the extent
20 permitted under applicable State law, may invest in any
21 New Markets Venture Capital company, or in any entity
22 established to invest solely in New Markets Venture Cap-
23 ital companies.

24 “(b) LIMITATION.—No bank described in subsection
25 (a) may make investments described in such subsection

1 that are greater than 5 percent of the capital and surplus
2 of the bank.

3 **“SEC. 359. FEDERAL FINANCING BANK.**

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

7 **“SEC. 360. REPORTING REQUIREMENTS.**

8 “Each New Markets Venture Capital company shall
9 provide to the Administration such information as the Ad-
10 ministration may require, including information on the
11 measurement criteria that the New Markets Venture Cap-
12 ital company proposed in its program application.

13 **“SEC. 361. EXAMINATIONS.**

14 “(a) IN GENERAL.—Each New Markets Venture
15 Capital company shall be subject to examinations made
16 at the direction of the Investment Division of the Adminis-
17 tration in accordance with this section.

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

23 “(c) COSTS.—

24 “(A) IN GENERAL.—The Administrator
25 may assess the cost of examinations under this

1 section, including compensation of the exam-
2 iners, against the company examined.

3 “(B) DEPOSIT OF FUNDS.—Funds col-
4 lected under this section shall be deposited in
5 the account for salaries and expenses of the Ad-
6 ministration.

7 “(C) AUTHORIZATION OF APPROPRIA-
8 TIONS.—Funds deposited under subparagraph
9 (B) are authorized to be appropriated solely to
10 cover the costs of examinations and other pro-
11 gram oversight activities.

12 **“SEC. 362. INJUNCTIONS AND OTHER ORDERS.**

13 “(a) IN GENERAL.— Whenever, in the Administrator
14 considers that a New Markets Venture Capital company,
15 or any other person, has engaged or is about to engage
16 in any acts or practices which constitute, or will constitute,
17 a violation of any provision of this Act, of any rule or regu-
18 lation under this Act, or of any order issued under this
19 Act, the Administration may make application to the prop-
20 er district court of the United States or to a United States
21 court of any place subject to the jurisdiction of the United
22 States for an order enjoining such acts or practices, or
23 for an order enforcing compliance with such provision,
24 rule, regulation, or order, and such courts shall have juris-
25 diction of such actions and, upon a showing by the Admin-

1 istration that such New Markets Venture Capital company
2 or other person has engaged or is about to engage in any
3 such acts or practices, a permanent or temporary injunc-
4 tion, restraining order, or other order, shall be granted
5 without bond.

6 “(b) SEIZING OF ASSETS.—In any such proceeding
7 the court, as a court of equity may, to the extent it deems
8 necessary, take exclusive jurisdiction of the New Markets
9 Venture Capital company and the assets thereof, wherever
10 located. The court shall have jurisdiction in any such pro-
11 ceeding to appoint a trustee or receiver to hold or admin-
12 ister under the direction of the court the assets so pos-
13 sessed.

14 “(c) ADMINISTRATION AS TRUSTEE OR RECEIVER.—

15 “(1) IN GENERAL.—The Administration may
16 act as trustee or receiver under subsection (b) of a
17 New Markets Venture Capital company.

18 “(2) APPOINTMENT.—At the request by the Ad-
19 ministration, the court may appoint the Administra-
20 tion to act as a trustee or receiver of a New Markets
21 Venture Capital company unless the court deems
22 such appointment inequitable or otherwise inappro-
23 priate.

1 **“SEC. 363. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS,**
2 **DIRECTORS, EMPLOYEES, OR AGENTS;**
3 **BREACH OF FIDUCIARY DUTY.**

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

16 “(b) FIDUCIARY DUTIES.—It shall be unlawful for
17 any officer, director, employee, agent, or other participant
18 in the management or conduct or the affairs of an New
19 Markets Venture Capital company to engage in any act
20 or practice, or to omit any act, in breach of his fiduciary
21 duty as such officer, director, employee, agent, or partici-
22 pant if, as a result thereof, the New Markets Venture Cap-
23 ital company has suffered or is in imminent danger or suf-
24 fering financial loss or other damage.

25 “(c) UNLAWFUL ACTS.—Except with the written con-
26 sent of the Administration, it shall be unlawful—

1 “(1) for any person to take office as an officer,
2 director, or employee of an New Markets Venture
3 Capital company, or to become an agent or partici-
4 pant in the conduct of the affairs or management of
5 an New Markets Venture Capital company, if the
6 person—

7 “(A) has been convicted of a felony, or any
8 other criminal offense involving dishonesty or
9 breach of trust, or

10 “(B) the person has been found civilly lia-
11 ble in damages, or has been permanently or
12 temporarily enjoined by order, judgment, or de-
13 cree of a court of competent jurisdiction, by
14 reason of any act or practice involving fraud, or
15 breach of trust; and

16 “(2) for any person continue to serve in any of
17 the capacities described in paragraph (1), if—

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

21 “(B) the person found civilly liable in dam-
22 ages, or is permanently or temporarily enjoined
23 by an order, judgment, or decree of a court of
24 competent jurisdiction, by reason of any act or
25 practice involving fraud or breach of trust.

1 “(d) REMOVAL OR SUSPENSION.—

2 “(1) IN GENERAL.—As provided in section 313,
3 the Administration may remove or suspend any per-
4 son upon whom the Administration has served a no-
5 tice under this subsection.

6 “(2) NOTICE.—The Administration may serve
7 upon any person who is an officer, director, or em-
8 ployee of a New Markets Venture Capital company,
9 or an agent or participant in the conduct of the af-
10 fairs or management of the company, a written no-
11 tice of the Administration’s intention to remove or
12 suspend such person from the person’s office or po-
13 sition, if in the opinion of the Administration, such
14 person—

15 “(A) has willfully and knowingly com-
16 mitted any substantial violation of—

17 “(i) this Act,

18 “(ii) any regulation issued under this
19 Act, or

20 “(iii) a cease-and-desist order which
21 has become final, or

22 “(B) has willfully and knowingly com-
23 mitted or engaged in any act, omission, or prac-
24 tice which constitutes a substantial breach of
25 his fiduciary duty, and that such violation or

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

3 **“SEC. 364. REGULATIONS.**

4 “The Administration is authorized to issue such regu-
5 lations as it deems necessary to carry out the provisions
6 of this part in accordance with its purposes.

7 **“SEC. 365. AUTHORIZATION OF APPROPRIATIONS.**

8 “For fiscal years 2000 through 2005, the Adminis-
9 tration is authorized to be appointed such subsidy budget
10 authority as may be necessary to guarantee up to
11 \$100,000,000 of debentures, and up to \$30,000,000 to
12 make technical assistance grants, for the purposes of this
13 part, to remain available until expended. This authority
14 shall be in effect for the period commencing with fiscal
15 year 2000 through fiscal year 2005.”.

16 **SEC. 102. CONFORMING AMENDMENTS.**

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

20 (1) by striking “TITLE III—SMALL BUSI-
21 NESS INVESTMENT COMPANIES” and insert-
22 ing the following:

23 “TITLE III—INVESTMENT DIVISION PROGRAMS

24 “PART A—SMALL BUSINESS INVESTMENT COMPANIES”;

25 and

1 (2) by inserting after the item relating to sec-
2 tion 322 the following:

“PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

“Sec. 350. Definitions.

“Sec. 351. Purposes.

“Sec. 352. Program establishment.

“Sec. 353. Selection of new markets venture capital companies.

“Sec. 354. Debentures.

“Sec. 355. Technical assistance.

“Sec. 356. Issuance and guarantee of trust certificates.

“Sec. 357. Fees.

“Sec. 358. Bank participation.

“Sec. 359. Federal financing bank.

“Sec. 360. Reporting requirements.

“Sec. 361. Examinations.

“Sec. 362. Injunctions and other orders.

“Sec. 363. Unlawful acts and omissions by officers, directors, employees, or
agents; breach of fiduciary duty.

“Sec. 364. Regulations.

“Sec. 365. Authorization of appropriations.”.

3 **SEC. 103. BANKRUPTCY EXEMPTION FOR NEW MARKETS**
4 **VENTURE CAPITAL COMPANIES.**

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

9 **SEC. 104. FEDERAL SAVINGS ASSOCIATIONS.**

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

13 “(F) NEW MARKETS VENTURE CAPITAL
14 COMPANIES.—A Federal savings association
15 may invest in stock, obligations, or other securi-
16 ties of any New Markets Venture Capital com-

1 pany as defined in section 350 of the Small
2 Business investment Act of 1958, except that a
3 Federal savings association may not make any
4 investment under this subparagraph if its ag-
5 gregate outstanding investment under this sub-
6 paragraph would exceed 5 percent of the capital
7 and surplus of such savings association.”.

8 **TITLE II—SMALL BUSINESS** 9 **LOANS**

10 **SEC. 201. PARTICIPATION RATE.**

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

14 **SEC. 202. GUARANTEE FEE.**

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

18 **SEC. 203. GUARANTEE REDUCTION.**

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

1 of the outstanding balance of the deferred participation
2 share of the loan.”

3 **TITLE III—AMERICA’S PRIVATE**
4 **INVESTMENT COMPANIES**

5 **SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSES.**

6 (a) CONGRESSIONAL FINDINGS.—

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

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

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

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

20 (1) license private for profit community devel-
21 opment entities that will focus on making equity and
22 credit investments for large-scale business develop-
23 ments that benefit low-income communities;

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

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

6 **SEC. 302. DEFINITIONS.**

7 As used in this Act:

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

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

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

17 (4) The term “community development entity”
18 means an entity whose primary mission must be
19 serving or providing investment capital for low-in-
20 come communities or low-income persons, which
21 maintains accountability to residents of low-income
22 communities, and which has 60 percent of its aggre-
23 gate gross assets invested in low-income community
24 investments or residential property located in low-
25 income communities.

1 (5) The term “cost” has the meaning set forth
2 in section 502(5) of the Federal Credit Reform Act
3 of 1990.

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

7 (7) The term “HUD” means the Secretary of
8 Housing and Urban Development or the Department
9 of Housing and Urban Development, as the context
10 requires.

11 (8) The term “low-income communities” means
12 census tracts with (A) poverty rates of at least 20
13 percent, based on the most recent census data; or
14 (B) median family income that does not exceed 80
15 percent of the greater of (i) metropolitan area me-
16 dian family income, or (ii) statewide median family
17 income.

18 (9) The term “qualified low-income community
19 investments” means equity investments in, or loans
20 to, qualified active businesses located in low-income
21 communities.

22 (10) The term “qualified active business”
23 means a business or trade—

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

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

7 (C) a substantial portion of the services
8 that the employees of which perform are per-
9 formed in low-income communities; and

10 (D) less than 5 percent of the aggregate
11 unadjusted bases of the property of which is at-
12 tributable to certain financial property, as the
13 Secretary shall set forth in regulations, or in
14 collectibles, other than collectibles held pri-
15 marily for sale to customers.

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

19 **SEC. 303. AUTHORIZATION.**

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

23 (b) **REGULATIONS.**—The Secretary is authorized to
24 regulate APICs for compliance with sound financial man-
25 agement practices, and the program and procedural goals

1 of this and other related Acts, and other purposes as re-
2 quired or authorized by this Act, or determined by the
3 Secretary. The Secretary may issue regulations, Federal
4 Register notices, and other guidance or directives to carry
5 out licensing and regulatory and other duties under this
6 Act.

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

8 (1) NUMBER OF LICENSES.—The Secretary is
9 authorized to have outstanding at any one time the
10 number of licenses for APICs that may be supported
11 by the amount of the budget authority appropriated
12 in accordance with the Federal Credit Reform Act of
13 1990 for the subsidy cost and the investment strate-
14 gies of such APICs.

15 (2) USE OF CREDIT SUBSIDY AFTER INITIAL
16 APPROPRIATION TO HUD.—With respect to any ap-
17 propriation of budget authority for the credit costs
18 after the initial appropriation, the Secretary may li-
19 cense additional APICs, or as hereinafter provided,
20 increase the credit subsidy allocated to an APIC as
21 an award for high performance under this Act.

22 (d) COOPERATION AND COORDINATION.—

23 (1) PROGRAM POLICIES.—The Secretary is au-
24 thorized to coordinate and cooperate, through memo-
25 randa of understanding, an APIC liaison committee,

1 or otherwise, with the Administrator, the Secretary
2 of the Treasury, and other agencies in the discretion
3 of the Secretary, on implementation of this Act, in-
4 cluding regulation, examination, and monitoring of
5 APICs under this Act.

6 (2) OPERATIONS.—The Secretary may carry
7 out this Act—

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

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

13 (e) FEES AND CHARGES FOR ADMINISTRATIVE
14 COSTS.—To the extent provided in appropriations Acts,
15 the Secretary is authorized to impose fees and charges for
16 application, review, licensing, and regulation, or other ac-
17 tions under this Act, and to pay for the costs of such ac-
18 tivities from the fees and charges collected.

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

22 (g) FUNDING.—

23 (1) AUTHORIZATION FOR APPROPRIATION OF
24 COST OF ANNUAL LOAN GUARANTEE COMMIT-
25 MENT.—For each of fiscal years 2000, 2001, 2002,

1 and 2003, there is authorized to be appropriated up
2 to \$36,000,000 for the cost of annual loan guar-
3 antee commitments under this Act. The Secretary
4 may make commitments to guarantee loans only to
5 the extent that the total loan principal, any part of
6 which is guaranteed, will not exceed \$1,000,000,000,
7 or the amount specified in appropriations Acts in
8 each such fiscal year. Amounts appropriated under
9 this paragraph shall remain available for 5 years.

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

22 **SEC. 304. SELECTION OF APICS.**

23 (a) NOTICE OF COMPETITIONS.—The Secretary shall
24 select APICs for licensing on the basis of competitions.
25 Such competitions shall be announced by a Federal Reg-

1 ister notice that invites applications for APIC licenses.
2 Each such notice shall set forth application requirements,
3 and such other terms of the competition not otherwise pro-
4 vided for, as determined by the Secretary.

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

10 (1) The applicant shall be a private for profit
11 entity that qualifies as a community development en-
12 tity for the purposes of the New Markets Tax Cred-
13 its, to the extent such credits are established under
14 Federal law.

15 (2) The entity must, as of the time that the li-
16 cense is approved, have reasonably available to it, as
17 determined by the Secretary, a minimum of
18 \$25,000,000 in equity capital, as determined by the
19 Secretary.

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

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

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

8 (6) The entity must prepare and submit a
9 statement of public purpose goals. The statement
10 shall include elements specified by the Secretary, in-
11 cluding proposed measurements and strategies for
12 meeting the goals. The goals shall promote commu-
13 nity and economic development, and include at
14 least—

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

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

20 (C) involvement of community-based orga-
21 nizations and residents in community develop-
22 ment activities.

23 (7) The entity must demonstrate a capacity to
24 cooperate with States or units of general local gov-

1 ernment and with community-based organizations
2 and residents of low-income communities.

3 (8) The entity must agree to comply with appli-
4 cable laws, including Federal executive orders, Office
5 of Management and Budget circulars, and Treasury
6 requirements, and such operating and regulatory re-
7 quirements as the Secretary may impose from time
8 to time.

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

12 (c) COMMUNICATIONS BETWEEN HUD AND APPLI-
13 CANTS DURING SELECTION PROCESS.—

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

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

22 (B) permit such officers and employees to
23 request and discuss with the applicant and oth-
24 ers (such as banks or other credit or business
25 references, or potential investors, that the appli-

1 cant specifies in writing) any more detailed in-
2 formation that may be desirable to facilitate
3 HUD's review of the applicant's application;

4 (C) restrict such officers and employees
5 from revealing to any applicant—

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

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

12 (D) set forth requirements for making and
13 keeping records of any communications con-
14 ducted under this subsection, including require-
15 ments for making such records available to the
16 public after the award of licenses under an ini-
17 tial or subsequent notice, as appropriate, under
18 subsection (a).

19 (2) Regulations under this subsection may be
20 issued as interim rules for effect on or before the
21 date of publication of the first notice under sub-
22 section (a), and shall apply only with respect to ap-
23 plications under such notice. Regulations to imple-
24 ment this subsection with respect to any notice after

1 the first such notice shall be subject to notice and
2 comment rulemaking.

3 (3) Section 12(e)(2) of the Department of
4 Housing and Urban Development Act (42 U.S.C.
5 3537a(e)(2)) is amended by inserting before the pe-
6 riod at the end the following: “, or any license pro-
7 vided under the America’s Private Investment Com-
8 panies Act”.

9 **SEC. 305. OPERATIONS OF APICS.**

10 (a) IN GENERAL.—

11 (1) An APIC shall have any powers or
12 authorities—

13 (A) that the APIC derives from the juris-
14 diction in which it is organized, or that the
15 APIC otherwise has;

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

18 (C) as the Secretary may prescribe by reg-
19 ulation.

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

1 (b) INVESTMENT LIMITATIONS.—

2 (1) QUALIFIED LOW-INCOME COMMUNITY IN-
3 VESTMENTS.—Substantially all investments that an
4 APIC makes must be qualified low-income commu-
5 nity investments if the investments are financed
6 with—

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

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

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

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

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

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

24 (c) BORROWING POWERS; DEBENTURES.—

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

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

6 (A) the total amount of debentures that an
7 APIC issues under this Act that an APIC may
8 have outstanding at any one time shall not ex-
9 ceed an amount equal to 200 percent of the eq-
10 uity capital of the APIC, as determined by the
11 Secretary: *Provided*, That the Secretary may by
12 regulation increase the foregoing percentage to
13 up to 300 percent for all APICs, or any reason-
14 able class of APICs; and

15 (B) an APIC must not have more than
16 \$300,000,000 in face value of debentures issued
17 under this Act outstanding at any one time.

18 (3) REPAYMENT.—

19 (A) An APIC must have repaid, or have
20 otherwise been relieved of indebtedness, with re-
21 spect to any interest or principal amounts of
22 borrowings under this subsection no less than 2
23 years before the APIC may dissolve or other-
24 wise complete the wind-up of its business.

1 (B) An APIC may repay any interest or
2 principal amounts of borrowings under this sub-
3 section at any time: *Provided*, That the repay-
4 ment of such amounts shall not relieve an APIC
5 of any duty otherwise applicable to the APIC
6 under this Act, unless the Secretary orders such
7 relief.

8 (C) Until an APIC has repaid all interest
9 and principal amounts on APIC borrowings
10 under this subsection, an APIC may use the
11 proceeds of investments in accordance with reg-
12 ulations issued by the Secretary only to—

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

16 (ii) pay for the reasonable administra-
17 tive expenses of the APIC;

18 (iii) purchase Treasury securities;

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

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

24 or

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

3 (D) After an APIC has repaid all interest
4 and principal amounts on APIC borrowings
5 under this subsection, and subject to continuing
6 compliance with subsection (a), the APIC may
7 use the proceeds from investments to make in-
8 terest, dividend, or other distributions to or on
9 behalf of investors in the nature of returns on
10 capital, or the withdrawal of equity capital,
11 without regard to subparagraph (C) but in con-
12 formity with the APICs investment strategy
13 and statement of public purpose goals.

14 (d) REUSE OF DEBENTURE PROCEEDS.—An APIC
15 may use the proceeds of sale of Treasury securities pur-
16 chased under subsection (c)(3)(C)(iii) to make qualified
17 low-income community investments, subject to the Sec-
18 retary’s approval. In making the request for the Sec-
19 retary’s approval, the APIC shall follow the procedures ap-
20 plicable to an APICs request for HUD guarantee action,
21 as the Secretary may modify such procedures for imple-
22 mentation of this subsection. Such procedures shall never-
23 theless include the description and certifications that an
24 APIC must include in all requests for guarantee action,

1 and the environmental certification applicable to initial ex-
2 penditures for a project or activity.

3 (e) ANTIPIRATING.—Notwithstanding any other pro-
4 vision of law, an APIC may not use any equity capital
5 required to be contributed under this Act, or the proceeds
6 from the sale of any debenture under this Act, to make
7 an investment, as determined by the Secretary, to assist
8 directly in the relocation of any industrial or commercial
9 plant, facility, or operation, from 1 area to another area,
10 if the relocation is likely to result in a significant loss of
11 employment in the labor market area from which the relo-
12 cation occurs.

13 (f) EXCLUSION OF APIC FROM DEFINITION OF
14 DEBTOR UNDER BANKRUPTCY PROVISIONS.—Section
15 109(b)(2) of title 11 of the United States Code is amended
16 by inserting before “credit union” the following: “Amer-
17 ica’s Private Investment Companies licensed by the De-
18 partment of Housing and Urban Development under the
19 America’s Private Investment Companies Act,”.

20 **SEC. 306. CREDIT ENHANCEMENT BY THE FEDERAL GOV-**
21 **ERNMENT.**

22 (a) ISSUANCE AND GUARANTEE OF DEBENTURES.—
23 Consistent with the Federal Credit Reform Act of 1990,
24 the Secretary is authorized to make commitments to guar-
25 antee and guarantee the timely payment of all principal

1 and interest as scheduled on, debentures issued by APICs.
2 Such commitments or guarantees may be made by the
3 Secretary on such terms and conditions, including but not
4 limited to amounts, expirations, number, priorities of re-
5 payment, security, collateral, amortization, payment of in-
6 terest (including the timing thereof), and fees and charges,
7 as the Secretary determines to be appropriate, in docu-
8 ments that the Secretary approves for any commitment
9 or guarantee, or pursuant to regulations issued by the Sec-
10 retary. Debentures guaranteed by the Secretary under this
11 subsection shall be senior to any debt obligation, equity
12 contribution or earnings, or the distribution of dividends,
13 interest, or other amounts of an APIC, notwithstanding
14 any Federal or other law. Debentures may be issued for
15 a term of not to exceed 21 years and shall bear interest
16 during all or any part of that time period at a rate or
17 rates approved by the Secretary. The debentures shall also
18 contain such other terms as the Secretary may fix.

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

24 (c) GUARANTEE OF TRUST CERTIFICATES.—

1 (1) IN GENERAL.—The Secretary is authorized,
2 upon such terms and conditions as the Secretary de-
3 termines to be appropriate, to guarantee the timely
4 payment of the principal of and interest on trust
5 certificates issued by the Secretary, or an agent or
6 other entity, for purposes of this section. Such guar-
7 antee shall be limited to the extent of principal and
8 interest on the guaranteed debentures which com-
9 pose the trust.

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

17 (3) PROPORTIONATE REDUCTION OPTION.—In
18 the event that the Secretary elects not to exercise
19 the option under paragraph (2), and a debenture in
20 such trust is prepaid, or in the event of default of
21 a debenture, the guarantee of timely payment of
22 principal and interest on the trust certificate shall be
23 reduced in proportion to the amount of principal and
24 interest that such prepaid debenture represents in
25 the trust. Interest on prepaid or defaulted deben-

1 tures shall accrue and be guaranteed by the Sec-
2 retary only through the date of payment of the guar-
3 antee. During the term of a trust certificate, it may
4 be called for redemption due to prepayment or de-
5 fault of all debentures that are in the corpus of the
6 trust.

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

12 (e) SUBROGATION AND LIENS.—

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

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

21 (f) REGISTRATION.—

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

1 (2) The Secretary may contract with an agent
2 or agents to carry out on behalf of the Secretary the
3 pooling and the central registration functions of this
4 section notwithstanding any other provision of law,
5 including maintenance on behalf of and under the
6 direction of the Secretary, such commercial bank ac-
7 counts or investments in obligations of the United
8 States as may be necessary to facilitate trusts
9 backed by debentures guaranteed under this Act and
10 the issuance of trust certificates to facilitate forma-
11 tion of the corpus of the trusts. The Secretary may
12 require such agent or agents to provide a fidelity
13 bond or insurance in such amounts as the Secretary
14 determines to be necessary to protect the interests of
15 the Government.

16 (3) Book-entry or other electronic forms of reg-
17 istration for trust certificates under this Act are au-
18 thorized.

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

1 **SEC. 307. APIC REQUESTS FOR GUARANTEE ACTIONS.**

2 (a) ALL APIC REQUESTS FOR HUD GUARANTEE
3 ACTION.—An APIC may request that the Secretary guar-
4 antee a debenture that the APIC intends to issue, in ac-
5 cordance with the Secretary’s regulations. All such re-
6 quests shall include a description of the manner in which
7 the APIC intends to use the proceeds from such deben-
8 ture. All such requests shall also include certification by
9 the APIC that the APIC is in substantial compliance
10 with—

11 (1) this Act and other applicable laws;

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

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

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

22 (b) REQUESTS FOR GUARANTEE OF DEBENTURES
23 THAT WOULD INCLUDE FUNDING FOR INITIAL EXPENDI-
24 TURE FOR A PROJECT OR ACTIVITY.—In addition to the
25 description and certification that an APIC is required to
26 supply in all requests for guarantee action under sub-

1 section (a), in the case of an APIC's request for a guar-
2 antee that includes a debenture, the proceeds of which the
3 APIC expects to be used as its initial expenditure for a
4 project or activity in which the APIC intends to invest,
5 and the expenditure for which would require an environ-
6 mental assessment under the National Environmental Pol-
7 icy Act of 1969 and other related laws that further the
8 purposes of such Act, such request for guarantee action
9 must include evidence satisfactory to the Secretary of the
10 certification of the completion of environmental review of
11 the project or activity required of the cognizant State or
12 local government under subsection (c). If the environ-
13 mental review responsibility for the project or activity has
14 not been assumed by a State or local government under
15 subsection (c), then the Secretary is responsible for car-
16 rying out the applicable responsibilities under the National
17 Environmental Policy Act of 1969 and other provisions
18 of law that further the purposes of such Act that relate
19 to the project or activity, and the Secretary must execute
20 such responsibilities before acting on the APIC's request
21 for the guarantee that is covered by this subsection.

22 (c) RESPONSIBILITY FOR ENVIRONMENTAL RE-
23 VIEWS.—

24 (1) EXECUTION OF RESPONSIBILITY BY THE
25 SECRETARY.—This subsection shall apply to guaran-

1 tees by the Secretary of debentures under this Act,
2 the proceeds of which would be used in connection
3 with qualified low-income community investments of
4 APICs under this Act.

5 (2) ASSUMPTION OF RESPONSIBILITY BY COG-
6 NIZANT UNIT OF GENERAL GOVERNMENT.—

7 (A) GUARANTEE OF DEBENTURES.—In
8 order to assure that the policies of the National
9 Environmental Policy Act of 1969 and other
10 provisions of law that further the purposes of
11 such Act (as specified in regulations issued by
12 the Secretary) are most effectively implemented
13 in connection with the expenditure of funds
14 under this Act, and to assure to the public
15 undiminished protection of the environment, the
16 Secretary may, under such regulations, in lieu
17 of the environmental protection procedures oth-
18 erwise applicable, provide for the guarantee of
19 debentures, any part of the proceeds of which
20 are to fund particular qualified low-income com-
21 munity investments of APICs under this Act, if
22 a State or unit of general local government, as
23 designated by the Secretary in accordance with
24 regulations issued by the Secretary, assumes all
25 of the responsibilities for environmental review,

1 decisionmaking, and action pursuant to the Na-
2 tional Environmental Policy Act of 1969 and
3 such other provisions of law that further such
4 Act as the regulations of the Secretary specify,
5 that would otherwise apply to the Secretary
6 were the Secretary to undertake the funding of
7 such investments as a Federal action.

8 (B) IMPLEMENTATION.—The Secretary
9 shall issue regulations to carry out this sub-
10 section only after consultation with the Council
11 on Environmental Quality. Such regulations
12 shall—

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

18 (ii) provide eligibility criteria and pro-
19 cedures for the designation of a State or
20 unit of general local government to assume
21 all of the responsibilities in this subsection;

22 (iii) specify the purposes for which
23 funds may be committed without regard to
24 the procedure established under paragraph
25 (3);

1 (iv) provide for monitoring of the per-
2 formance of environmental reviews under
3 this subsection;

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

7 (vi) subject to the discretion of the
8 Secretary, provide for suspension or termi-
9 nation by the Secretary of the assumption
10 under subparagraph (A).

11 (C) RESPONSIBILITIES OF STATES AND
12 UNITS OF GENERAL LOCAL GOVERNMENT.—The
13 Secretary's duty under subparagraph (B) shall
14 not be construed to limit any responsibility as-
15 sumed by a State or unit of general local gov-
16 ernment with respect to any particular request
17 for guarantee under subparagraph (A), or the
18 use of funds for a qualified investment.

19 (3) PROCEDURE.—The Secretary shall approve
20 the request for guarantee of a debenture, any part
21 of the proceeds of which is to fund particular quali-
22 fied low-income community investments of APICs
23 under this Act, that is subject to the procedures au-
24 thorized by this subsection only if, not less than 15
25 days prior to such approval and prior to any com-

1 mitment of funds to such investment (except for
2 such purposes specified in the regulations issued
3 under paragraph (2)(B)), the APIC submits to the
4 Secretary a request for guarantee of a debenture
5 that is accompanied by evidence of a certification of
6 the State or unit of general local government which
7 meets the requirements of paragraph (4). The ap-
8 proval by the Secretary of any such certification
9 shall be deemed to satisfy the Secretary's respon-
10 sibilities pursuant to paragraph (1) under the Na-
11 tional Environmental Policy Act of 1969 and such
12 other provisions of law as the regulations of the Sec-
13 retary specify insofar as those responsibilities relate
14 to the guarantees of debentures, any parts of the
15 proceeds of which are to fund such investments,
16 which are covered by such certification.

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

19 (A) be in a form acceptable to the Sec-
20 retary;

21 (B) be executed by the chief executive offi-
22 cer or other officer of the State or unit of gen-
23 eral local government who qualifies under regu-
24 lations of the Secretary;

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

5 (D) specify that the certifying officer—

6 (i) consents to assume the status of a
7 responsible Federal official under the Na-
8 tional Environmental Policy Act of 1969
9 and each provision of law specified in regu-
10 lations issued by the Secretary insofar as
11 the provisions of such Act or other such
12 provision of law apply pursuant to para-
13 graph (2); and

14 (ii) is authorized and consents on be-
15 half of the State or unit of general local
16 government and himself or herself to ac-
17 cept the jurisdiction of the Federal courts
18 for the purpose of enforcement of the re-
19 sponsibilities as such an official.

20 **SEC. 308. EXAMINATION AND MONITORING OF APICS.**

21 (a) IN GENERAL.—The Secretary shall, under regula-
22 tions, through audits, performance agreements, license
23 conditions, or otherwise, examine and monitor the oper-
24 ations and activities of APICs for compliance with sound
25 financial management practices, and for satisfaction of the

1 program and procedural goals of this Act and other re-
2 lated Acts. The Secretary may undertake any responsi-
3 bility under this section in cooperation with an APIC liai-
4 son committee, or any agency that is a member of such
5 a committee, or other agency.

6 (b) MONITORING, UPDATING, AND PROGRAM RE-
7 VIEW.—

8 (1) REPORTING AND UPDATING.—The Sec-
9 retary may establish such annual or more frequent
10 reporting requirements for APICs, and such require-
11 ments for independent audits, and the updating of
12 the statement of public purpose goals, investment
13 strategy (including the benchmarks in such strat-
14 egy), and other documents that may have been used
15 in the license application process under this Act, as
16 the Secretary determines necessary to assist the Sec-
17 retary in monitoring the compliance and perform-
18 ance of APICs.

19 (2) EXAMINATIONS.—The Secretary shall, no
20 less often than once every 2 years, examine the oper-
21 ations and portfolio of each APIC licensed under
22 this Act for compliance with sound financial man-
23 agement practices, and for compliance with this Act.

24 (3) EXAMINATION STANDARDS.—

1 (A) SOUND FINANCIAL MANAGEMENT
2 PRACTICES.—The Secretary shall examine each
3 APIC to ensure, as a matter of sound financial
4 management practices, substantial compliance
5 with this and other applicable laws, including
6 Federal executive orders, Department of Treas-
7 ury and Office of Management and Budget
8 guidance, circulars, and application and licens-
9 ing requirements on a continuing basis. The
10 Secretary may set any additional sound finan-
11 cial management practices standards by regula-
12 tion, including standards that address solvency
13 and financial exposure.

14 (B) PERFORMANCE AND OTHER EXAMINA-
15 TIONS.—The Secretary shall monitor each
16 APICs progress in meeting the goals in the
17 APICs statement of public purpose goals, exe-
18 cuting the APICs investment strategy, and
19 other matters.

20 **SEC. 309. INCENTIVES AND PENALTIES.**

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

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

3 (b) PENALTIES.—

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

13 (2) PENALTIES REQUIRING NOTICE AND HEAR-
14 ING.—With respect to an act of commission or omis-
15 sion under paragraph (1) for which the Secretary
16 may penalize an APIC or a manager, the Secretary
17 may, following notice in writing to the APIC or the
18 manager, and opportunity for administrative
19 hearing—

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

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

1 (C) revoke the APICs license.

2 (3) PENALTIES REQUIRING NOTICE AND AN OP-
3 PORTUNITY TO RESPOND.—With respect to any act
4 of commission or omission under paragraph (1) for
5 which the Secretary may penalize an APIC or a
6 manager, following notice in writing and an oppor-
7 tunity for the APIC or manager to respond, impose
8 any reasonable penalty. Such a penalty may, in addi-
9 tion to any others, be—

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

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

17 (C) any other penalty that the Secretary
18 determines to be less burdensome to the APIC
19 than a penalty that requires notice and an ad-
20 ministrative hearing under this Act.

21 (c) PROCEDURES.—

22 (1) No award under this section shall be made
23 until notice thereof is published in the Federal Reg-
24 ister.

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

8 (3)(A) The Secretary may suspend or condition
9 an APICs license for up to 45 days without prior no-
10 tice in the Federal Register, but such suspension or
11 conditioning shall take effect only after the Sec-
12 retary has issued a written notice (including a writ-
13 ing in electronic form) of such action to the APIC.
14 Such written notice shall be effective without regard
15 to whether the APIC has been accorded the oppor-
16 tunity to respond. Such suspension or conditioning
17 shall be subject to enforcement by an order of a
18 court when the Secretary has issued such written
19 notice.

20 (B) After such suspension or conditioning takes
21 effect, the Secretary shall promptly cause a notice of
22 suspension or conditioning of such license for a pe-
23 riod of up to 90 days to be published in the Federal
24 Register. The APIC shall be entitled to respond to
25 such notice. In counting the time period of the sus-

1 pension or conditioning, the first day shall be the
2 day that written notice under this paragraph is
3 issued.

4 (C) During the time period of such suspension
5 or conditioning, the Secretary may proceed under
6 subsection (b)(2), and in accordance with the proce-
7 dures applicable to such subsection, to revoke the
8 APICs license. Only if the Secretary so proceeds,
9 notwithstanding any other provision of this section,
10 the Secretary may extend the suspension or condi-
11 tioning of the APICs license by publishing a notice
12 of such action in the Federal Register—

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

15 (ii) for any subsequent extensions of up to
16 90 days, before the preceding period of up to
17 90 days expires.

18 (D) The suspension or conditioning of an
19 APICs license by the Secretary under this paragraph
20 shall remain in effect in accordance with its terms
21 until final adjudication in any litigation undertaken
22 to challenge such suspension or conditioning, or rev-
23 ocation, of an APICs license.

1 **TITLE IV—NEW MARKETS**
2 **CREDIT**

3 **SEC. 401. NEW MARKETS TAX CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 (relating to business-related credits) is amended by
7 adding at the end the following new section:

8 **“SEC. 45D. NEW MARKETS TAX CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—

10 “(1) IN GENERAL.—For purposes of section 38,
11 in the case of a taxpayer who holds a qualified eq-
12 uity investment on a credit allowance date of such
13 investment which occurs during the taxable year, the
14 new markets tax credit determined under this sec-
15 tion for such taxable year is an amount equal to 6
16 percent of the amount paid to the qualified commu-
17 nity development entity for such investment at its
18 original issue.

19 “(2) CREDIT ALLOWANCE DATE.—The term
20 ‘credit allowance date’ means, with respect to any
21 qualified equity investment—

22 “(A) the date on which such investment is
23 initially made, and

24 “(B) each of the 4 anniversary dates of
25 such date thereafter.

1 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘qualified equity
4 investment’ means any equity investment in a quali-
5 fied community development entity if—

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

10 “(B) substantially all of such cash is used
11 by the qualified community development entity
12 to make qualified low-income community invest-
13 ments, and

14 “(C) such investment is designated for
15 purposes of this section by the qualified com-
16 munity development entity.

17 Such term shall not include any equity investment
18 issued by a qualified community development entity
19 more than 5 years after the date that such entity re-
20 ceives an allocation under subsection (f). Any alloca-
21 tion not used within such 5-year period may be re-
22 allocated by the Secretary under subsection (f).

23 “(2) LIMITATION.—The maximum amount of
24 equity investments issued by a qualified community
25 development entity which may be designated under

1 paragraph (1)(C) by such entity shall not exceed the
2 portion of the limitation amount allocated under
3 subsection (f) to such entity.

4 “(3) SAFE HARBOR FOR DETERMINING USE OF
5 CASH.—The requirement of paragraph (1)(B) shall
6 be treated as met if at least 85 percent of the aggre-
7 gate gross assets of the qualified community devel-
8 opment entity are invested in qualified low-income
9 community investments.

10 “(4) TREATMENT OF SUBSEQUENT PUR-
11 CHASERS.—The term ‘qualified equity investment’
12 includes any equity investment which would (but for
13 paragraph (1)(A)) be a qualified equity investment
14 in the hands of the taxpayer if such investment was
15 a qualified equity investment in the hands of a prior
16 holder.

17 “(5) REDEMPTIONS.—A rule similar to the rule
18 of section 1202(c)(3) shall apply for purposes of this
19 subsection.

20 “(6) EQUITY INVESTMENT.—The term ‘equity
21 investment’ means—

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

1 “(B) any capital interest in a qualified
2 community development entity which is a part-
3 nership.

4 “(c) QUALIFIED COMMUNITY DEVELOPMENT ENTI-
5 TY.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘qualified com-
7 munity development entity’ means any domestic cor-
8 poration or partnership if—

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

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

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

19 “(2) SPECIAL RULES FOR CERTAIN ORGANIZA-
20 TIONS.—The requirements of paragraph (1) shall be
21 treated as met by—

22 “(A) any specialized small business invest-
23 ment company (as defined in section
24 1044(c)(3)), and

1 “(B) any community development financial
2 institution (as defined in section 103 of the
3 Community Development Banking and Finan-
4 cial Institutions Act of 1994 (12 U.S.C. 4702)).

5 “(d) QUALIFIED LOW-INCOME COMMUNITY INVEST-
6 MENTS.—For purposes of this section—

7 “(1) IN GENERAL.—The term ‘qualified low-in-
8 come community investment’ means—

9 “(A) any equity investment in, or loan to,
10 any qualified active low-income community busi-
11 ness,

12 “(B) the purchase from another commu-
13 nity development entity of any loan made by
14 such entity which is a qualified low-income com-
15 munity investment if the amount received by
16 such other entity from such purchase is used by
17 such other entity to make qualified low-income
18 community investments,

19 “(C) financial counseling and other serv-
20 ices specified in regulations prescribed by the
21 Secretary to businesses located in, and resi-
22 dents of, low-income communities, and

23 “(D) any equity investment in, or loan to,
24 any qualified community development entity if
25 substantially all of the investment or loan is

1 used by such entity to make qualified low-in-
2 come community investments described in sub-
3 paragraphs (A), (B), and (C).

4 “(2) QUALIFIED ACTIVE LOW-INCOME COMMU-
5 NITY BUSINESS.—

6 “(A) IN GENERAL.—For purposes of para-
7 graph (1), the term ‘qualified active low-income
8 community business’ means, with respect to any
9 taxable year, any corporation or partnership if
10 for such year—

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

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

19 “(iii) a substantial portion of the serv-
20 ices performed for such entity by its em-
21 ployees are performed in any low-income
22 community,

23 “(iv) less than 5 percent of the aver-
24 age of the aggregate unadjusted bases of
25 the property of such entity is attributable

1 to collectibles (as defined in section
2 408(m)(2)) other than collectibles that are
3 held primarily for sale to customers in the
4 ordinary course of such business, and

5 “(v) less than 5 percent of the aver-
6 age of the aggregate unadjusted bases of
7 the property of such entity is attributable
8 to nonqualified financial property (as de-
9 fined in section 1397B(e)).

10 “(B) PROPRIETORSHIP.—Such term shall
11 include any business carried on by an individual
12 as a proprietor if such business would meet the
13 requirements of subparagraph (A) were it incor-
14 porated.

15 “(C) PORTIONS OF BUSINESS MAY BE
16 QUALIFIED ACTIVE LOW-INCOME COMMUNITY
17 BUSINESS.—The term ‘qualified active low-in-
18 come community business’ includes any trades
19 or businesses which would qualify as a qualified
20 active low-income community business if such
21 trades or businesses were separately incor-
22 porated.

23 “(3) QUALIFIED BUSINESS.—For purposes of
24 this subsection, the term ‘qualified business’ has the

1 meaning given to such term by section 1397B(d);
2 except that—

3 “(A) in lieu of applying paragraph (2)(B)
4 thereof, the rental to others of real property lo-
5 cated in any low-income community shall be
6 treated as a qualified business if there are sub-
7 stantial improvements located on such property,

8 “(B) paragraph (3) thereof shall not apply,
9 and

10 “(C) such term shall not include any busi-
11 ness if a significant portion of the equity inter-
12 ests in such business are held by any person
13 who holds a significant portion of the equity in-
14 vestments in the community development entity.

15 “(e) LOW-INCOME COMMUNITY.—For purposes of
16 this section—

17 “(1) IN GENERAL.—The term ‘low-income com-
18 munity’ means any population census tract if—

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

21 “(B)(i) in the case of a tract not located
22 within a metropolitan area, the median family
23 income for such tract does not exceed 80 per-
24 cent of statewide median family income, or

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

6 “(2) AREAS NOT WITHIN CENSUS TRACTS.—In
7 the case of an area which is not tracted for popu-
8 lation census tracts, the equivalent county divisions
9 (as defined by the Bureau of the Census for pur-
10 poses of defining poverty areas) shall be used for
11 purposes of determining poverty rates and median
12 family income.

13 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
14 MENTS DESIGNATED.—

15 “(1) IN GENERAL.—There is a new markets tax
16 credit limitation of \$1,200,000,000 for each of cal-
17 endar years 2000 through 2004.

18 “(2) ALLOCATION OF LIMITATION.—The limita-
19 tion under paragraph (1) shall be allocated by the
20 Secretary among qualified community development
21 entities selected by the Secretary. In making alloca-
22 tions under the preceding sentence, the Secretary
23 shall give priority to entities with records of having
24 successfully provided capital or technical assistance
25 to disadvantaged businesses or communities.

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

7 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

8 “(1) IN GENERAL.—If, at any time during the
9 5-year period beginning on the date of the original
10 issue of a qualified equity investment in a qualified
11 community development entity, there is a recapture
12 event with respect to such investment, then the tax
13 imposed by this chapter for the taxable year in
14 which such event occurs shall be increased by the
15 credit recapture amount.

16 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
17 poses of paragraph (1), the credit recapture amount
18 is an amount equal to the sum of—

19 “(A) the aggregate decrease in the credits
20 allowed to the taxpayer under section 38 for all
21 prior taxable years which would have resulted if
22 no credit had been determined under this sec-
23 tion with respect to such investment, plus

24 “(B) interest at the overpayment rate es-
25 tablished under section 6621 on the amount de-

1 terminated under subparagraph (A) for each
2 prior taxable year for the period beginning on
3 the due date for filing the return for the prior
4 taxable year involved.

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

7 “(3) RECAPTURE EVENT.—For purposes of
8 paragraph (1), there is a recapture event with re-
9 spect to an equity investment in a qualified commu-
10 nity development entity if—

11 “(A) such entity ceases to be a qualified
12 community development entity,

13 “(B) the proceeds of the investment cease
14 to be used as required of subsection (b)(1)(B),
15 or

16 “(C) such investment is redeemed by such
17 entity.

18 “(4) SPECIAL RULES.—

19 “(A) TAX BENEFIT RULE.—The tax for
20 the taxable year shall be increased under para-
21 graph (1) only with respect to credits allowed
22 by reason of this section which were used to re-
23 duce tax liability. In the case of credits not so
24 used to reduce tax liability, the carryforwards

1 and carrybacks under section 39 shall be appro-
2 priately adjusted.

3 “(B) NO CREDITS AGAINST TAX.—Any in-
4 crease in tax under this subsection shall not be
5 treated as a tax imposed by this chapter for
6 purposes of determining the amount of any
7 credit under this chapter or for purposes of sec-
8 tion 55.

9 “(h) BASIS REDUCTION.—The basis of any qualified
10 equity investment shall be reduced by the amount of any
11 credit determined under this section with respect to such
12 investment.

13 “(i) REGULATIONS.—The Secretary shall prescribe
14 such regulations as may be appropriate to carry out this
15 section, including regulations—

16 “(1) which limit the credit for investments
17 which are directly or indirectly subsidized by other
18 Federal benefits (including the credit under section
19 42 and the exclusion from gross income under sec-
20 tion 103),

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

23 “(3) which impose appropriate reporting re-
24 quirements, and

1 “(4) which apply the provisions of this section
2 to newly formed entities.”

3 (b) CREDIT MADE PART OF GENERAL BUSINESS
4 CREDIT.—

5 (1) IN GENERAL.—Subsection (b) of section 38
6 of such Code is amended by striking “plus” at the
7 end of paragraph (11), by striking the period at the
8 end of paragraph (12) and inserting “, plus”, and
9 by adding at the end the following new paragraph:
10 “(13) the new markets tax credit determined
11 under section 45D(a).”

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

15 “(9) NO CARRYBACK OF NEW MARKETS TAX
16 CREDIT BEFORE JANUARY 1, 2000.—No portion of
17 the unused business credit for any taxable year
18 which is attributable to the credit under section 45D
19 may be carried back to a taxable year ending before
20 January 1, 2000.”

21 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
22 (c) of section 196 of such Code is amended by striking
23 “and” at the end of paragraph (7), by striking the period
24 at the end of paragraph (8) and inserting “, and”, and
25 by adding at the end the following new paragraph:

1 “(9) the new markets tax credit determined
2 under section 45D(a).”

3 (d) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of such Code is amended by adding at the end the fol-
6 lowing new item:

 “Sec. 45D. New markets tax credit.”

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to investments made after Decem-
9 ber 31, 1999.

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