

108TH CONGRESS
1ST SESSION

H. R. 923

AN ACT

To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

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To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

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 “Premier Certified
3 Lenders Program Improvement Act of 2003”.

4 **SEC. 2. LOSS RESERVES OF PREMIER CERTIFIED LENDERS**
5 **TEMPORARILY DETERMINED ON THE BASIS**
6 **OF OUTSTANDING BALANCE OF DEBEN-**
7 **TURES.**

8 Paragraph (6) of section 508(c) of the Small Busi-
9 ness Investment Act of 1958 (15 U.S.C. 697e(c)) is
10 amended—

11 (1) by striking “The Administration” and in-
12 serting the following:

13 “(A) IN GENERAL.—The Administration”;

14 and

15 (2) by adding at the end the following new sub-
16 paragraph:

17 “(B) TEMPORARY REDUCTION BASED ON
18 OUTSTANDING BALANCE.—Notwithstanding
19 subparagraph (A), during the 2-year period be-
20 ginning on the date that is 90 days after the
21 date of the enactment of this subparagraph, the
22 Administration shall allow the certified develop-
23 ment company to withdraw from the loss re-
24 serve such amounts as are in excess of 1 per-
25 cent of the aggregate outstanding balances of
26 debentures to which such loss reserve relates.

1 The preceding sentence shall not apply with re-
2 spect to any debenture before 100 percent of
3 the contribution described in paragraph (4)
4 with respect to such debenture has been
5 made.”.

6 **SEC. 3. ALTERNATIVE LOSS RESERVE PILOT PROGRAM FOR**
7 **CERTAIN PREMIER CERTIFIED LENDERS.**

8 (a) IN GENERAL.—Subsection (c) of section 508 of
9 the Small Business Investment Act of 1958 (15 U.S.C.
10 697e) is amended by adding at the end the following new
11 paragraphs:

12 “(7) ALTERNATIVE LOSS RESERVE.—

13 “(A) ELECTION.—With respect to any eli-
14 gible calendar quarter, any qualified high loss
15 reserve PCL may elect to have the requirements
16 of this paragraph apply in lieu of the require-
17 ments of paragraphs (2) and (4) for such quar-
18 ter.

19 “(B) CONTRIBUTIONS.—

20 “(i) ORDINARY RULES INAPPLI-
21 CABLE.—Except as provided under clause
22 (ii) and paragraph (5), a qualified high
23 loss reserve PCL that makes the election
24 described in subparagraph (A) with respect
25 to a calendar quarter shall not be required

1 to make contributions to its loss reserve
2 during such quarter.

3 “(ii) BASED ON LOSS.—A qualified
4 high loss reserve PCL that makes the elec-
5 tion described in subparagraph (A) with
6 respect to any calendar quarter shall, be-
7 fore the last day of such quarter, make
8 such contributions to its loss reserve as are
9 necessary to ensure that the amount of the
10 loss reserve of the PCL is—

11 “(I) not less than \$100,000; and

12 “(II) sufficient, as determined by
13 a qualified independent auditor, for
14 the PCL to meet its obligations to
15 protect the Federal Government from
16 risk of loss.

17 “(iii) CERTIFICATION.—Before the
18 end of any calendar quarter for which an
19 election is in effect under subparagraph
20 (A), the head of the PCL shall submit to
21 the Administrator a certification that the
22 loss reserve of the PCL is sufficient to
23 meet such PCL’s obligation to protect the
24 Federal Government from risk of loss.
25 Such certification shall be in such form

1 and submitted in such manner as the Ad-
2 ministrator may require and shall be
3 signed by the head of such PCL and the
4 auditor making the determination under
5 clause (ii)(II).

6 “(C) DISBURSEMENTS.—

7 “(i) ORDINARY RULE INAPPLI-
8 CABLE.—Paragraph (6) shall not apply
9 with respect to any qualified high loss re-
10 serve PCL for any calendar quarter for
11 which an election is in effect under sub-
12 paragraph (A).

13 “(ii) EXCESS FUNDS.—At the end of
14 each calendar quarter for which an election
15 is in effect under subparagraph (A), the
16 Administration shall allow the qualified
17 high loss reserve PCL to withdraw from its
18 loss reserve the excess of—

19 “(I) the amount of the loss re-
20 serve, over

21 “(II) the greater of \$100,000 or
22 the amount which is determined under
23 subparagraph (B)(ii) to be sufficient
24 to meet the PCL’s obligation to pro-

1 tect the Federal Government from
2 risk of loss.

3 “(D) RECONTRIBUTION.—If the require-
4 ments of this paragraph apply to a qualified
5 high loss reserve PCL for any calendar quarter
6 and cease to apply to such PCL for any subse-
7 quent calendar quarter, such PCL shall make a
8 contribution to its loss reserve in such amount
9 as the Administrator may determine provided
10 that such amount does not exceed the amount
11 which would result in the total amount in the
12 loss reserve being equal to the amount which
13 would have been in such loss reserve had this
14 paragraph never applied to such PCL. The Ad-
15 ministrator may require that such payment be
16 made as a single payment or as a series of pay-
17 ments.

18 “(E) RISK MANAGEMENT.—If a qualified
19 high loss reserve PCL fails to meet the require-
20 ment of subparagraph (F)(iii) during any pe-
21 riod for which an election is in effect under sub-
22 paragraph (A) and such failure continues for
23 180 days, the requirements of paragraphs (2),
24 (4), and (6) shall apply to such PCL as of the
25 end of such 180-day period and such PCL shall

1 make the contribution to its loss reserve de-
2 scribed in subparagraph (D). The Adminis-
3 trator may waive the requirements of this sub-
4 paragraph.

5 “(F) QUALIFIED HIGH LOSS RESERVE
6 PCL.—The term ‘qualified high loss reserve
7 PCL’ means, with respect to any calendar year,
8 any premier certified lender designated by the
9 Administrator as a qualified high loss reserve
10 PCL for such year. The Administrator shall not
11 designate a company under the preceding sen-
12 tence unless the Administrator determines
13 that—

14 “(i) the amount of the loss reserve of
15 the company is not less than \$100,000;

16 “(ii) the company has established and
17 is utilizing an appropriate and effective
18 process for analyzing the risk of loss asso-
19 ciated with its portfolio of PCLP loans and
20 for grading each PCLP loan made by the
21 company on the basis of the risk of loss as-
22 sociated with such loan; and

23 “(iii) the company meets or exceeds 4
24 or more of the specified risk management
25 benchmarks as of the most recent assess-

1 ment by the Administration or the Admin-
2 istration has issued a waiver with respect
3 to the requirement of this clause.

4 “(G) SPECIFIED RISK MANAGEMENT
5 BENCHMARKS.—For purposes of this para-
6 graph, the term ‘specified risk management
7 benchmarks’ means the following rates, as de-
8 termined by the Administrator:

9 “(i) Currency rate.

10 “(ii) Delinquency rate.

11 “(iii) Default rate.

12 “(iv) Liquidation rate.

13 “(v) Loss rate.

14 “(H) QUALIFIED INDEPENDENT AUDI-
15 TOR.—For purpose of this paragraph, the term
16 ‘qualified independent auditor’ means any audi-
17 tor who—

18 “(i) is compensated by the qualified
19 high loss reserve PCL;

20 “(ii) is independent of such PCL; and

21 “(iii) has been approved by the Ad-
22 ministrators during the preceding year.

23 “(I) PCLP LOAN.—For purposes of this
24 paragraph, the term ‘PCLP loan’ means any
25 loan guaranteed under this section.

1 “(J) ELIGIBLE CALENDAR QUARTER.—For
2 purposes of this paragraph, the term ‘eligible
3 calendar quarter’ means—

4 “(i) the first calendar quarter that be-
5 gins after the end of the 90-day period be-
6 ginning with the date of the enactment of
7 this paragraph; and

8 “(ii) the 7 succeeding calendar quar-
9 ters.

10 “(K) CALENDAR QUARTER.—For purposes
11 of this paragraph, the term ‘calendar quarter’
12 means—

13 “(i) the period which begins on Janu-
14 ary 1 and ends on March 31 of each year;

15 “(ii) the period which begins on April
16 1 and ends on June 30 of each year;

17 “(iii) the period which begins on July
18 1 and ends on September 30 of each year;
19 and

20 “(iv) the period which begins on Octo-
21 ber 1 and ends on December 31 of each
22 year.

23 “(L) REGULATIONS.—Not later than 45
24 days after the date of the enactment of this
25 paragraph, the Administrator shall publish in

1 the Federal Register and transmit to the Con-
2 gress regulations to carry out this paragraph.
3 Such regulations shall include provisions relat-
4 ing to—

5 “(i) the approval of auditors under
6 subparagraph (H); and

7 “(ii) the designation of qualified high
8 loss reserve PCLs under subparagraph
9 (F), including the determination of wheth-
10 er a process for analyzing risk of loss is
11 appropriate and effective for purposes of
12 subparagraph (F)(ii).

13 “(8) BUREAU OF PCLP OVERSIGHT.—

14 “(A) ESTABLISHMENT.—There is hereby
15 established in the Small Business Administra-
16 tion a bureau to be known as the Bureau of
17 PCLP Oversight.

18 “(B) PURPOSE.—The Bureau of PCLP
19 Oversight shall carry out such functions of the
20 Administration under this subsection as the Ad-
21 ministrator may designate.

22 “(C) DEADLINE.—Not later than 90 days
23 after the date of the enactment of this Act—

24 “(i) the Administrator shall ensure
25 that the Bureau of PCLP Oversight is pre-

1 pared to carry out any functions des-
2 ignated under subparagraph (B), and

3 “(ii) the Office of the Inspector Gen-
4 eral of the Administration shall report to
5 the Congress on the preparedness of the
6 Bureau of PCLP Oversight to carry out
7 such functions.”.

8 (b) INCREASED REIMBURSEMENT FOR LOSSES RE-
9 LATED TO DEBENTURES ISSUED DURING ELECTION PE-
10 RIOD.—Subparagraph (C) of section 508(b)(2) of the
11 Small Business Investment Act of 1958 (15 U.S.C.
12 697e(b)(2)) is amended by inserting “(15 percent in the
13 case of any such loss attributable to a debenture issued
14 by the company during any period for which an election
15 is in effect under subsection (c)(7) for such company)”
16 before “; and”.

17 (c) CONFORMING AMENDMENTS.—

18 (1) Subparagraph (D) of section 508(b)(2) of
19 the Small Business Investment Act of 1958 (15
20 U.S.C. 697e(b)(2)) is amended by striking “sub-
21 section (c)(2)” and inserting “subsection (c)”.

22 (2) Paragraph (5) of section 508(c) of the
23 Small Business Investment Act of 1958 (15 U.S.C.
24 697e(c)) is amended by striking “10 percent”.

25 (d) STUDY AND REPORT.—

1 (1) IN GENERAL.—The Administrator shall
2 enter into a contract with a Federal agency experi-
3 enced in community development lending and finan-
4 cial regulation or with a member of the Federal Fi-
5 nancial Institutions Examinations Council to study
6 and prepare a report regarding—

7 (A) the extent to which statutory require-
8 ments have caused overcapitalization in the loss
9 reserves maintained by certified development
10 companies participating in the Premier Cer-
11 tified Lenders Program established under sec-
12 tion 508 of the Small Business Investment Act
13 of 1958 (15 U.S.C. 697e); and

14 (B) alternatives for establishing and main-
15 taining loss reserves that are sufficient to pro-
16 tect the Federal Government from the risk of
17 loss associated with loans guaranteed under
18 such Program.

19 (2) TRANSMISSION OF REPORT.—The report
20 described in paragraph (1) shall be transmitted to
21 the Committee on Small Business of the House of
22 Representatives and the Committee on Small Busi-
23 ness and Entrepreneurship of the Senate not later
24 than 90 days after the date of the enactment of this
25 Act.

1 (3) LIMITATION.—The amount of the contract
2 described in paragraph (1) shall not exceed \$75,000.

Passed the House of Representatives June 24, 2003.

Attest:

Clerk.