''(2) CONFLICTS OF INTEREST.—The development companies selected under paragraph (1) shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender.

''(3) QUALIFICATIONS.—In order to qualify to participate in the pilot program under this section, each development company shall—

''(A) have not less than 6 years of experience in the program established by title V of the Small Business Investment Act of 1958;

''(B) have made, during the 6 most recent fiscal years, an average of not less than 10 loans per year through the program established by such title V of the Small Business Investment Act of 1958;

''(C) have not less than 2 years of experience in liquidating loans under the authority of a Federal, State, or other lending program; and

''(D) meet such other requirements as the Administration may establish.

''(c) AUTHORITY OF DEVELOPMENT COMPANIES.—The development companies selected under subsection (b) shall, for loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] that are in default after the date of enactment of this Act [Sept. 30, 1996], be authorized to—

''(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds, subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property: *Provided*, That the Administrator shall approve or deny a request for such purchase within a period of 10 business days; and

''(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices pursuant to a liquidation plan approved by the administrator in advance of its implementation. If the administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

''(d) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the pilot program, the Administrator shall—

''(1) have full authority to rescind the authority granted any development company under this section upon a 10-day written notice stating the reasons for the rescission; and

''(2) not later than 90 days after the admission of the development companies specified in subsection (b), implement the pilot program.

''(e) REPORT.—

''(1) IN GENERAL.—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]. The report shall include information relating to—

''(A) the total dollar amount of each loan and project liquidated;

''(B) the total dollar amount guaranteed by the Administration;

''(C) total dollar losses;

''(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project; and

''(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

''(2) REPORTING PERIOD.—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 [sic] fiscal quarters of the pilot program's operation after the date of implementation.''

[Section 204 of title II of div. D of Pub. L. 104–208, set out above, to cease to have effect beginning on the date on which final regulations are issued to carry out section 697g of this title, see section 1(a)(9) [title III, § 307(b)] of Pub. L. 106–554, set out as a Regulations note under section 697g of this title.]

§ 696. Loans for plant acquisition, construction, conversion and expansion

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided*, *however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) $5,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv), or (v);

(ii) $5,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 695(d)(3) of this title;

(iii) $5,500,000 for each project of a small manufacturer;

(iv) $5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

(v) $5,500,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term ''small manufacturer'' means a small business concern—

(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(ii) all of the production facilities of which are located in the United States.

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 697 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

(I) State or local governments;

(II) banks or other financial institutions;

(III) foundations or other not-for-profit institutions; or

(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses [1] (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter shall provide—

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this subchapter, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(ii) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than $250,000; or

(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is $250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subchapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(7) PERMISSIBLE DEBT REFINANCING.—

(A) IN GENERAL.—Any financing approved under this subchapter may include a limited amount of debt refinancing.

(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(ii) the existing indebtedness is collateralized by fixed assets;

(iii) the existing indebtedness was incurred for the benefit of the small business concern;

(iv) the financing under this subchapter will be used only for refinancing existing indebtedness or costs relating to the project financed under this subchapter;

(v) the financing under this subchapter will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(vii) the financing under section 697a of this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(Pub. L. 85–699, title V, §502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87–27, §26, May 1, 1961, 75 Stat. 63; Pub. L. 87–341, §10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94–305, title I, §§108(a), 110, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–507, title I, §112, Oct. 24, 1978, 92 Stat. 1760; Pub. L. 97–35, title XIX, §1909, Aug. 13, 1981, 95 Stat. 778; Pub. L. 100–418, title VIII, §8007(b), Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–590, title I, §116(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997, 2998; Pub. L. 101–574, title II, §214(c), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 104–208, div. D, title II, §202(a), Sept. 30, 1996, 110 Stat. 3009–734; Pub. L. 105–135, title II, §221, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, §1(a)(9) [title II, §208(b), title III, §303, title VIII,

[1] So in original. Probably should be ''clause''.

§ 802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–683, 2763A–684, 2763A–702; Pub. L. 108–447, div. K, title I, § 104, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, § 1204(b), Dec. 19, 2007, 121 Stat. 1772; Pub. L. 111–5, div. A, title V, § 504(a), Feb. 17, 2009, 123 Stat. 155; Pub. L. 111–240, title I, §§ 1112, 1122, Sept. 27, 2010, 124 Stat. 2508, 2510.)

AMENDMENTS

2010—Par. (2)(A)(i). Pub. L. 111–240, § 1122(c), substituted ''clause (ii), (iii), (iv), or (v)'' for ''subparagraph (B) or (C)''.

Pub. L. 111–240, § 1112(1), substituted ''$5,000,000'' for ''$1,500,000''.

Par. (2)(A)(ii). Pub. L. 111–240, § 1112(2), substituted ''$5,000,000'' for ''$2,000,000''.

Par. (2)(A)(iii) to (v). Pub. L. 111–240, § 1112(3)–(5), substituted ''$5,500,000'' for ''$4,000,000''.

Par. (7)(C). Pub. L. 111–240, § 1122(b), struck out subpar. (C) relating to refinancing not involving expansions.

Pub. L. 111–240, § 1122(a), added subpar. (C).

2009—Par. (7). Pub. L. 111–5 added par. (7).

2007—Par. (2)(A)(iv), (v). Pub. L. 110–140 added cls. (iv) and (v).

2004—Par. (2). Pub. L. 108–447 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Loans made by the Administration under this section shall be limited to $1,000,000 for each such identifiable small business concern, except loans meeting the criteria specified in section 695(d)(3) of this title, which shall be limited to $1,300,000 for each such identifiable small business concern.''

2000—Par. (2). Pub. L. 106–554, § 1(a)(9) [title III, § 303], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Loans made by the Administration under this section shall be limited to $750,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern.''

Par. (3)(E). Pub. L. 106–554, § 1(a)(9) [title II, § 208(b)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (6). Pub. L. 106–554, § 1(a)(9) [title VIII, § 802(b)], added par. (6).

1997—Par. (1). Pub. L. 105–135, § 221(1), added par. (1) and struck out former par. (1) which read as follows: ''The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration.''

Par. (3)(D), (E). Pub. L. 105–135, § 221(2), added subpars. (D) and (E).

Par. (5). Pub. L. 105–135, § 221(3), added par. (5).

1996—Par. (3). Pub. L. 104–208 inserted heading and amended text of par. (3) generally. Prior to amendment, text read as follows: ''Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

''(A) State or local governments;

''(B) banks or other financial institutions;

''(C) foundations or other not-for-profit institutions; or

''(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter.''

1990—Par. (2). Pub. L. 101–574 struck out period at end and inserted '', except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern.''

1988—Pub. L. 100–590, § 116(b)(1), inserted ''Loans for plant acquisition, construction, conversion, and expansion'' as section catchline.

Par. (2). Pub. L. 100–418 substituted ''$750,000'' for ''$500,000''.

Par. (4). Pub. L. 100–590, § 116(a), added par. (4).

1981—Pars. (1) to (4). Pub. L. 97–35 redesignated pars. (2) to (4) as (1) to (3), respectively. Former par. (1), which provided that all loans made shall be so secured as reasonably to assure repayment and that in agreements to participate in loans on a deferred basis, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement, was struck out.

Par. (5). Pub. L. 97–35 struck out par. (5) which provided that loans, including extensions and renewals, may be made for a period not exceeding twenty-five years and that an extension may be granted up to ten years, if such extension will aid in the orderly liquidation of the loan, and that the Administration may fix the rate of interest.

1978—Par. (4). Pub. L. 95–507 inserted provisions relating to derivation of community injection funds.

1976—Pub. L. 94–305, § 108(a), inserted ''acquisition,'' after ''plant'' in introductory text.

Par. (3). Pub. L. 94–305, § 110, substituted ''$500,000'' for ''$350,000''.

1961—Par. (3). Pub. L. 87–341, § 10(1), substituted ''$350,000'' for ''$250,000''.

Par. (5). Pub. L. 87–341, § 10(2), substituted ''twenty-five'' for ''ten'' before ''years plus such additional period''.

Par. (6). Pub. L. 87–27 struck out par. (6) which provided for termination of authority of the Administration to make loans to local development companies after June 30, 1961.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, § 1122(b), Sept. 27, 2010, 124 Stat. 2512, provided that the amendment made by section 1122(b) is effective 2 years after Sept. 27, 2010.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

§ 697. Development company debentures

(a) Guarantees; Administration authority; regulatory terms and conditions; full faith and credit; subordination of debentures

(1) Except as provided in subsection (b) of this section, the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may be regulation determine to be appropriate: *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be fi-