Subsec. (b)(3). Pub. L. 105–135, §223(a)(2)(B), added par. (3).

Subsec. (c). Pub. L. 105–135, §223(a)(3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financings approved pursuant to this section.

''(2) AMOUNT.—The amount of the loss reserve shall be based upon the greater of—

''(A) the historic loss rate on debentures issued by such company; or

''(B) 10 percent of the amount of the company's exposure as determined under subsection (b)(2)(C) of this section.

''(3) ASSETS.—The loss reserve shall be comprised of segregated assets of the company which shall be securitized in favor of the Administration.

''(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve in the following amounts and at the following intervals:

''(A) 50 percent when a debenture is closed.

''(B) 25 percent not later than 1 year after a debenture is closed.

''(C) 25 percent not later than 2 years after a debenture is closed.''

Subsec. (d)(1). Pub. L. 105–135, §223(a)(4), substituted ''to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans'' for ''to approve loans''.

Subsec. (f). Pub. L. 105–135, §223(a)(5), substituted ''certified development company'' for ''State or local development company'' in introductory provisions.

Subsec. (g). Pub. L. 105–135, §223(a)(6), substituted ''revocation'' for ''designation'' in heading.

Subsec. (h). Pub. L. 105–135, §223(a)(7), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: ''Not later than 180 days after October 22, 1994, the Administration shall promulgate regulations to carry out this section.''

Subsec. (i)(3). Pub. L. 105–135, §223(a)(8), substituted ''other lenders, specifically comparing default rates and recovery rates on liquidations'' for ''other lenders''.

1994—Pub. L. 103–403, §217(b), which directed repeal of this section effective Oct. 1, 2000, and was repealed by section 1(a)(9) [title III, §305] of Pub. L. 106–554, was not executed to reflect the probable intent of Congress and the amendments to this section by section 1(a)(9) [title III, §306] of Pub. L. 106–554. See Termination Date note below.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

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.

TERMINATION DATE

Section 217(b) of Pub. L. 103–403, as amended by Pub. L. 105–135, title II, §223(c), Dec. 2, 1997, 111 Stat. 2606, which provided that this section was to be repealed effective Oct. 1, 2000, was repealed by Pub. L. 106–554, §1(a)(9) [title III, §305], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.

REGULATIONS

Pub. L. 105–135, title II, §223(b), Dec. 2, 1997, 111 Stat. 2606, provided that: ''The Administrator shall—

''(1) not later than 150 days after the date of enactment of this Act [Dec. 2, 1997], promulgate regulations to carry out the amendments made by subsection (a) [amending this section]; and

''(2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a).''

§ 697f. Prepayment of development company debentures

(a) In general

(1) Prepayment authorized

Subject to the requirements set forth in subsection (b) of this section, an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this chapter may, at the election of the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.

(2) Procedure

(A) In general

In making a prepayment under paragraph (1)—

(i) the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

(B) Repurchase premium

(i) In general

For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of—

(I) the unpaid principal balance due on the debenture on the date of prepayment; and

(II) the applicable percentage rate, as determined in accordance with clauses (ii) and (iii).

(ii) Applicable percentage rate

For purposes of clause (i)(II), the applicable percentage rate means—

(I) with respect to a 10-year term loan, 8.5 percent;

(II) with respect to a 15-year term loan, 9.5 percent;

(III) with respect to a 20-year term loan, 10.5 percent; and

(IV) with respect to a 25-year term loan, 11.5 percent.

(iii) Adjustments to applicable percentage rate

The percentage rates described in clause (ii) shall be increased or decreased by the

Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103–317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) Requirements

For purposes of subsection (a) of this section, the requirements of this subsection are that—

(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) of this section under the programs authorized by this subchapter, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 697 of this title, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

(c) No prepayment fees or penalties

No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

(d) Refinancing limitations

(1) In general

The refinancing of a debenture under sections 697a and 697b of this title, in accordance with subsection (b)(2) of this section—

(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 697a and 697b of this title and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 697b of this title.

(2) Job creation

An applicant for refinancing under section 697a of this title of a loan made pursuant to section 697 of this title shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

(3) Loan processing fee

To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) of this section may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

(4) New debentures

Issuers of debentures under subchapter III of this chapter may issue new debentures in accordance with such subchapter in order to prepay existing debentures as authorized in this section.

(5) Preliminary notice

(A) In general

The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this subchapter. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of $1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

(B) "Borrower" defined

For purposes of this paragraph, the term ''borrower'', in the case of a small business investment company or a specialized small business investment company, means ''issuer''.

(6) Final notice

Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

(e) Definitions

For purposes of this section—

(1) the term ''issuer'' means—

(A) the qualified State or local development company that issued a debenture pursuant to section 697 of this title, which has been purchased by the Federal Financing Bank; and

(B) a small business investment company licensed pursuant to section 681 of this title; or

(2) the term ''borrower'' means a small business concern whose loan secures a debenture issued pursuant to section 697 of this title.

(f) Regulations

Not later than 30 days after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to carry out this section.

(g) Authorization

There are authorized to be appropriated $30,000,000 to carry out the provisions of The Small Business Prepayment Penalty Relief Act of 1994.

(Pub. L. 85–699, title V, § 509, as added Pub. L. 103–403, title V, § 503, Oct. 22, 1994, 108 Stat. 4199; amended Pub. L. 104–208, div. D, title II, § 208(h)(1)(H), Sept. 30, 1996, 110 Stat. 3009–747.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a)(1), see References in Text note set out under section 661 of this title.

Public Law 103–317, referred to in subsec. (a)(2)(B)(iii), is Pub. L. 103–317, Aug. 26, 1994, 108 Stat. 1724, known as the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1995. For complete classification of this Act to the Code, see Tables.

The Small Business Prepayment Penalty Relief Act of 1994, referred to in subsec. (g), is title V of Pub. L. 103–403, Oct. 22, 1994, 108 Stat. 4198, which enacted this section and provisions set out as notes under this section and section 661 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 661 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 208(h)(1)(H)(i), struck out at end ''A small business investment company operating under the authority of section 681(d) of this title that has issued a debenture that was purchased by and is held by the Administration, may, under the same terms and conditions, prepay such debenture, and the penalty as provided in this section, and shall thereafter be immediately eligible to apply for additional assistance from the Administration.''

Subsec. (e)(1)(B). Pub. L. 104–208, § 208(h)(1)(H)(ii), substituted ''section 681 of this title'' for ''subsection (c) or (d) of section 681 of this title''.

INTENTION OF CONGRESS

Pub. L. 103–403, title V, § 502, Oct. 22, 1994, 108 Stat. 4198, provided that:

''(a) IN GENERAL.—The Small Business Administration shall fully utilize the $30,000,000 appropriated in Public Law 103–317 [108 Stat. 1724] to reduce, in accordance with this title [enacting this section and provisions set out as a note under section 661 of this title] and the amendments made by this title, prepayment penalties imposed in connection with debentures issued under—

''(1) section 303 or 503 of the Small Business Investment Act of 1958 [15 U.S.C. 683, 697], which have been purchased by the Federal Financing Bank; and

''(2) title III [probably means title III of Pub. L. 85–699, which is classified to section 681 et seq. of this title] to companies operating under section 301(d) of such Act [15 U.S.C. 681(d)], which have been purchased by the Small Business Administration.

''(b) EQUAL OPPORTUNITY.—In order to provide an equal opportunity to participate in the program authorized under this title, the Small Business Administration shall afford each borrower or issuer of a debenture subject to this title, not less than 45 days to elect to participate and to provide an earnest money deposit. The Administration shall subsequently allow a period of not less than 4 months, during which those borrowers or issuers that elect to participate shall be allowed to complete the prepayment process.

''(c) RESTRICTIONS ON PARTICIPATION.—In no event shall the Small Business Administration—

''(1) allow any borrower or issuer to participate in the program if the borrower or issuer fails to—

''(A) make a timely election and provide the deposit on a timely basis; or

''(B) complete the prepayment process within the required time; or

''(2) allow any borrower or issuer to participate in the program at a percentage rate other than the rate finally determined to be applicable to all other borrowers or issuers with similar terms of years.''

§ 697g. Foreclosure and liquidation of loans

(a) Delegation of authority

In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 697(e) of this title) that meets the eligibility requirements of subsection (b)(1) of this section the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 697 of this title.

(b) Eligibility for delegation

(1) Requirements

A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) of this section if—

(A) the company—

(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

(ii) is participating in the Premier Certified Lenders Program under section 697e of this title; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 697 of this title; and

(B) the company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 697 of this title; and

(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) Confirmation

On request the Administration shall examine the qualifications of any company de-