

this subchapter to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, as necessary, on the staff of the company or from an outside entity;

(5) with respect to binding commitments to be made to the company under this subchapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the purposes of the program established under this subchapter;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and

(8) such other information as the Secretary may require.

**(c) Status**

Not later than 90 days after the initial receipt by the Secretary of an application under this section, the Secretary shall provide to the applicant a written report describing the status of the application and any requirements remaining for completion of the application.

**(d) Matters considered**

In reviewing and processing any application under this section, the Secretary—

(1) shall determine whether—

(A) the applicant meets the requirements of subsection (e) of this section; and

(B) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this subchapter;

(2) shall take into consideration—

(A) the need for and availability of financing for rural business concerns in the geographic area in which the applicant is to commence business;

(B) the general business reputation of the owners and management of the applicant; and

(C) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(3) shall not take into consideration any projected shortage or unavailability of grant funds or leverage.

**(e) Approval; license**

**(1) In general**

Except as provided in paragraph (2), the Secretary may approve an applicant to operate as a rural business investment company under this subchapter and license the applicant as a rural business investment company, if—

(A) the Secretary determines that the application satisfies the requirements of subsection (b) of this section;

(B) the area in which the rural business investment company is to conduct its operations, and establishment of branch offices or agencies (if authorized by the articles), are approved by the Secretary; and

(C) the applicant enters into a participation agreement with the Secretary.

**(2) Capital requirements**

**(A) In general**

Notwithstanding any other provision of this subchapter, the Secretary may approve an applicant to operate as a rural business investment company under this subchapter and designate the applicant as a rural business investment company, if the Secretary determines that the applicant—

(i) has private capital of more than \$2,500,000;

(ii) would otherwise be approved under this subchapter, except that the applicant does not satisfy the requirements of section 2009cc-8(c) of this title; and

(iii) has a viable business plan that—

(I) reasonably projects profitable operations; and

(II) has a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 2009cc-8(c) of this title.

**(B) Leverage**

An applicant approved under subparagraph (A) shall not be eligible to receive leverage under this subchapter until the applicant satisfies the requirements of section 2009cc-8(c) of this title.

**(C) Grants**

An applicant approved under subparagraph (A) shall be eligible for grants under section 2009cc-7 of this title in proportion to the private capital of the applicant, as determined by the Secretary.

(Pub. L. 87-128, title III, § 384D, as added Pub. L. 107-171, title VI, § 6029, May 13, 2002, 116 Stat. 391.)

**§ 2009cc-4. Debentures**

**(a) In general**

The Secretary may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any rural business investment company.

**(b) Terms and conditions**

The Secretary may make guarantees under this section on such terms and conditions as the Secretary considers appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

**(c) Full faith and credit of the United States**

Section 2009g(i) of this title shall apply to any guarantee under this section.

**(d) Maximum guarantee**

Under this section, the Secretary may—

(1) guarantee the debentures issued by a rural business investment company only to the extent that the total face amount of outstanding guaranteed debentures of the rural business investment company does not exceed the lesser of—

(A) 300 percent of the private capital of the rural business investment company; or

(B) \$105,000,000; and

(2) provide for the use of discounted debentures.

(Pub. L. 87-128, title III, §384E, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 393.)

**§ 2009cc-5. Issuance and guarantee of trust certificates**

**(a) Issuance**

The Secretary may issue trust certificates representing ownership of all or a fractional part of debentures issued by a rural business investment company and guaranteed by the Secretary under this subchapter, if the certificates are based on and backed by a trust or pool approved by the Secretary and composed solely of guaranteed debentures.

**(b) Guarantee**

**(1) In general**

The Secretary may, under such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Secretary or agents of the Secretary for purposes of this section.

**(2) Limitation**

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

**(3) Prepayment or default**

**(A) In general**

**(i) Authority to prepay**

A debenture may be prepaid at any time without penalty.

**(ii) Reduction of guarantee**

Subject to clause (i), if a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest the prepaid debenture represents in the trust or pool.

**(B) Interest**

Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Secretary only through the date of payment of the guarantee.

**(C) Redemption**

At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

**(c) Full faith and credit of the United States**

Section 2009g(i) of this title shall apply to any guarantee of a trust certificate issued by the Secretary under this section.

**(d) Subrogation and ownership rights**

**(1) Subrogation**

If the Secretary pays a claim under a guarantee issued under this section, the claim shall be subrogated fully to the rights satisfied by the payment.

**(2) Ownership rights**

No Federal, State, or local law shall preclude or limit the exercise by the Secretary of

the ownership rights of the Secretary in a debenture residing in a trust or pool against which 1 or more trust certificates are issued under this section.

**(e) Management and administration**

**(1) Registration**

The Secretary shall provide for a central registration of all trust certificates issued under this section.

**(2) Creation of pools**

The Secretary may—

(A) maintain such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this subchapter; and

(B) issue trust certificates to facilitate the creation of those trusts or pools.

**(3) Fidelity bond or insurance requirement**

Any agent performing functions on behalf of the Secretary under this paragraph shall provide a fidelity bond or insurance in such amount as the Secretary considers to be necessary to fully protect the interests of the United States.

**(4) Regulation of brokers and dealers**

The Secretary may regulate brokers and dealers in trust certificates issued under this section.

**(5) Electronic registration**

Nothing in this subsection prohibits the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 87-128, title III, §384F, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 393; amended Pub. L. 110-234, title VI, §6027(a), May 22, 2008, 122 Stat. 1182; Pub. L. 110-246, §4(a), title VI, §6027(a), June 18, 2008, 122 Stat. 1664, 1943.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (b)(3)(A). Pub. L. 110-246, §6027(a), added cl. (i), designated existing provisions as cl. (ii), inserted heading, and substituted “Subject to clause (i), if” for “In the event”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

**§ 2009cc-6. Fees**

**(a) In general**

The Secretary may charge a fee that does not exceed \$500 with respect to any guarantee or grant issued under this subchapter.

**(b) Trust certificate**

Notwithstanding subsection (a) of this section, the Secretary shall not collect a fee for any