

(1) shall specify in general terms—

(A) the purposes for which the rural business investment company is formed;

(B) the name of the rural business investment company;

(C) the area or areas in which the operations of the rural business investment company are to be carried out;

(D) the place where the principal office of the rural business investment company is to be located; and

(E) the amount and classes of the shares of capital stock of the rural business investment company;

(2) may contain any other provisions consistent with this subchapter that the rural business investment company may determine appropriate to adopt for the regulation of the business of the rural business investment company and the conduct of the affairs of the rural business investment company; and

(3) shall be subject to the approval of the Secretary.

(c) Capital requirements

(1) In general

Except as provided in paragraph (2), the private capital of each rural business investment company shall be not less than—

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each rural business investment company authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Secretary under this subchapter.

(2) Exception

The Secretary may, in the discretion of the Secretary and based on a showing of special circumstances and good cause, permit the private capital of a rural business investment company described in paragraph (1)(B) to be less than \$10,000,000, but not less than \$5,000,000, if the Secretary determines that the action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) Time frame

Each rural business investment company shall have a period of 2 years to meet the capital requirements of this subsection.

(4) Adequacy

In addition to the requirements of paragraph (1), the Secretary shall—

(A) determine whether the private capital of each rural business investment company is adequate to ensure a reasonable prospect that the rural business investment company will be operated soundly and profitably, and managed actively and prudently in accordance with the articles of the rural business investment company;

(B) determine that the rural business investment company will be able to comply with the requirements of this subchapter;

(C) require that at least 75 percent of the capital of each rural business investment company is invested in rural business concerns and not more than 10 percent of the investments shall be made in an area contain-

ing a city of over 150,000 in the last decennial census and the Census Bureau defined urbanized area containing or adjacent to that city;

(D) ensure that the rural business investment company is designed primarily to meet equity capital needs of the businesses in which the rural business investment company invests and not to compete with traditional small business financing by commercial lenders; and

(E) require that the rural business investment company makes short-term non-equity investments of less than 5 years only to the extent necessary to preserve an existing investment.

(d) Diversification of ownership

The Secretary shall ensure that the management of each rural business investment company licensed after May 13, 2002, is sufficiently diversified from and unaffiliated with the ownership of the rural business investment company so as to ensure independence and objectivity in the financial management and oversight of the investments and operations of the rural business investment company.

(Pub. L. 87-128, title III, §384I, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 396; amended Pub. L. 110-234, title VI, §6027(c), May 22, 2008, 122 Stat. 1182; Pub. L. 110-246, §4(a), title VI, §6027(c), June 18, 2008, 122 Stat. 1664, 1944.)

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. (c)(3), (4). Pub. L. 110-246, §6027(c), added par. (3) and redesignated former par. (3) as (4).

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-9. Financial institution investments

(a) In general

Except as otherwise provided in this section and notwithstanding any other provision of law, the following banks, associations, and institutions are eligible both to establish and invest in any rural business investment company or in any entity established to invest solely in rural business investment companies:

(1) Any bank or savings association the deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), including an investment pool created entirely by such bank or savings association.

(2) Any Farm Credit System institution described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

(b) Limitation

No bank, association, or institution described in subsection (a) of this section may make investments described in subsection (a) of this section that are greater than 5 percent of the cap-

ital and surplus of the bank, association, or institution.

(c) Limitation on rural business investment companies controlled by Farm Credit System institutions

If a Farm Credit System institution described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)) holds more than 25 percent of the shares of a rural business investment company, either alone or in conjunction with other System institutions (or affiliates), the rural business investment company shall not provide equity investments in, or provide other financial assistance to, entities that are not otherwise eligible to receive financing from the Farm Credit System under that Act (12 U.S.C. 2001 et seq.).

(Pub. L. 87-128, title III, §384J, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 397; amended Pub. L. 110-234, title VI, §6027(d), May 22, 2008, 122 Stat. 1182; Pub. L. 110-246, §4(a), title VI, §6027(d), June 18, 2008, 122 Stat. 1664, 1944.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (a)(1), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (c), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

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. (a)(1). Pub. L. 110-246, §6027(d)(1), inserted “, including an investment pool created entirely by such bank or savings association” before period at end.

Subsec. (c). Pub. L. 110-246, §6027(d)(2), substituted “25” for “15”.

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-10. Reporting requirements

(a) Rural business investment companies

Each rural business investment company that participates in the program established under this subchapter shall provide to the Secretary such information as the Secretary may require, including—

(1) information relating to the measurement criteria that the rural business investment company proposed in the program application of the rural business investment company; and

(2) in each case in which the rural business investment company under this subchapter makes an investment in, or a loan or grant to,

a business that is not located in a rural area, a report on the number and percentage of employees of the business who reside in those areas.

(b) Public reports

(1) In general

The Secretary shall prepare and make available to the public an annual report on the program established under this subchapter, including detailed information on—

(A) the number of rural business investment companies licensed by the Secretary during the previous fiscal year;

(B) the aggregate amount of leverage that rural business investment companies have received from the Federal Government during the previous fiscal year;

(C) the aggregate number of each type of leveraged instruments used by rural business investment companies during the previous fiscal year and how each number compares to previous fiscal years;

(D) the number of rural business investment company licenses surrendered and the number of rural business investment companies placed in liquidation during the previous fiscal year, identifying the amount of leverage each rural business investment company has received from the Federal Government and the type of leverage instruments each rural business investment company has used;

(E) the amount of losses sustained by the Federal Government as a result of operations under this subchapter during the previous fiscal year and an estimate of the total losses that the Federal Government can reasonably expect to incur as a result of the operations during the current fiscal year;

(F) actions taken by the Secretary to maximize recoupment of funds of the Federal Government expended to implement and administer the Rural Business Investment Program under this subchapter during the previous fiscal year and to ensure compliance with the requirements of this subchapter (including regulations);

(G) the amount of Federal Government leverage that each licensee received in the previous fiscal year and the types of leverage instruments each licensee used;

(H) for each type of financing instrument, the sizes, types of geographic locations, and other characteristics of the small business investment companies using the instrument during the previous fiscal year, including the extent to which the investment companies have used the leverage from each instrument to make loans or equity investments in rural areas; and

(I) the actions of the Secretary to carry out this subchapter.

(2) Prohibition

In compiling the report required under paragraph (1), the Secretary may not—

(A) compile the report in a manner that permits identification of any particular type of investment by an individual rural business investment company or small business