

1999—Subsec. (d)(3)(E)–(H). Pub. L. 106-50 added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

1990—Subsec. (a). Pub. L. 101-574, §214(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company program authorized by this subchapter. In order to carry out this objective, the Administration is hereby directed to place greater emphasis on the needs of rural areas and the promotion of the development company program in such areas, and is further directed to develop a plan for greater outreach of procurement and export trade seminars in such areas. As used in this subchapter, the term ‘rural areas’ means those localities with populations of less than 20,000.”

Subsec. (d). Pub. L. 101-574, §214(b), added subsec. (d).
1988—Pub. L. 100-590 inserted “State development companies” as section catchline, added subsec. (a), and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

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.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Assistance made available under any financings made under this subchapter during 2-year period beginning Oct. 1, 2002, to be treated as a separate program of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) only, see section 6(c) of Pub. L. 107-100, set out as a note under section 636 of this title.

LOAN LIQUIDATION PILOT PROGRAM

Pub. L. 104-208, div. D, title II, §204, Sept. 30, 1996, 110 Stat. 3009-736, which required the Administrator to carry out a loan liquidation pilot program, was terminated effective May 14, 2007. See section 697g of this title and Regulations note set out under that section.

§ 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 to-

ward 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 clauses¹ (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

¹ So in original. Probably should be “clause”.

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, §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 financed with the proceeds of a loan made pursuant to subsection (b)(1) of this section are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

(3) The full faith and credit of the United States in pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) Statutory terms and conditions

No guarantee may be made with respect to any debenture under subsection (a) of this section unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 696 of this title;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 683(b) of this title;