

“(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 work-out 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 described in subsection (a) of this section to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

(c) Scope of delegated authority

(1) In general

Each qualified State or local development company to which the Administration delegates authority under section¹ (a) may with respect to any loan described in subsection (a) of this section—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 696 of this title; or

(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a work-

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

out plan approved in advance by the Administration under paragraph (2)(C).

(2) Administration approval

(A) Liquidation plan

(i) In general

Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(iii) Routine actions

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

(B) Purchase of indebtedness

(i) In general

In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) Administration action on request

(I) Timing

Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

(II) Notice of no decision

With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

(C) Workout plan

(i) In general

In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a workout plan is received by the Adminis-

tration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(D) Compromise of indebtedness

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

(E) Contents of notice of no decision

Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

(3) Conflict of interest

In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) Suspension or revocation of authority

The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

(1) does not meet the requirements of subsection (b)(1) of this section;

(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

(e) Report

(1) In general

Based on information provided by qualified State and local development companies and

the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

(2) Contents

Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

(i) the total cost of the project financed with the loan;

(ii) the total original dollar amount guaranteed by the Administration;

(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(D) A comparison between—

(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.

(Pub. L. 85-699, title V, §510, as added Pub. L. 106-554, §1(a)(9) [title III, §307(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-685.)

REFERENCES IN TEXT

The Small Business Programs Improvement Act of 1996, referred to in subsec. (b)(1)(A)(i), is Pub. L. 104-208, div. D, Sept. 30, 1996, 110 Stat. 3009-724. Provisions relating to loan liquidation pilot program are contained in section 204 of title II of div. D of Pub. L. 104-208, which is set out as a note under section 695 of this title. For complete classification of this Act to the Code, see

Short Title of 1996 Amendment note set out under section 631 of this title and Tables.

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.

REGULATIONS

Pub. L. 106-554, §1(a)(9) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-689, provided that:

“(1) IN GENERAL.—Not later than 150 days after the date of the enactment of this Act [Dec. 21, 2000], the Administrator shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958 [15 U.S.C. 697g], as added by subsection (a) of this section.

“(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1) [final rule effective May 14, 2007; see 72 F.R. 18349], section 204 of the Small Business Programs Improvement Act of 1996 [Pub. L. 104-208, div. D] (15 U.S.C. 695 note) shall cease to have effect.”

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

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701 to 712.	Omitted or Repealed.
712a.	Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies.
713 to 713a-3.	Omitted or Repealed.
713a-4.	Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.
713a-5.	Exemption of Commodity Credit Corporation and its obligations from taxation.
713a-6.	Sale of surplus agricultural commodities to foreign governments.
713a-7.	Exchange of surplus agricultural commodities for reserve stocks of strategic materials.
713a-8.	Omitted.
713a-9.	Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased.
713a-10.	Omitted.
713a-11.	Annual appropriations to reimburse Commodity Credit Corporation for net realized loss.
713a-11a.	Interest prohibited when reimbursing Corporation for net realized losses.
713a-12.	Deposit of net realized gain of Commodity Credit Corporation in Treasury.
713a-13.	Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation.
713a-14.	Dairy export incentive program.
713b.	Repealed.
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