

(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

(H) Any other factors deemed appropriate by the Administrator.

**(3) Nationwide distribution**

The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

**(d) Requirements to be met for final approval**

The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

**(1) Capital requirement**

Each conditionally approved company shall raise not less than \$5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

**(2) Nonadministration resources for operational assistance**

**(A) In general**

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multi-year period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10

years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

**(B) Exception**

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

**(C) Limitation**

In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

**(e) Final approval; designation**

The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85-699, title III, §354, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

**§ 689d. Debentures**

**(a) In general**

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

**(b) Terms and conditions**

The Administrator may make guarantees under this section on such terms and conditions as it deems 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**

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

**(d) Maximum guarantee**

**(1) In general**

Under this section, the Administrator may guarantee the debentures issued by a New

Markets Venture Capital company only to be<sup>1</sup> extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

**(2) Treatment of certain Federal funds**

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

**(e) Investment limitations**

**(1) Definition**

In this subsection, the term “covered New Markets Venture Capital company” means a New Markets Venture Capital company—

(A) granted final approval by the Administrator under section 689c(e) of this title on or after March 1, 2002; and

(B) that has obtained a financing from the Administrator.

**(2) Limitation**

Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this subchapter for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.

(Pub. L. 85-699, title III, §355, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-658; amended Pub. L. 111-240, title I, §1115, Sept. 27, 2010, 124 Stat. 2508.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-240 added subsec. (e).

**§ 689e. Issuance and guarantee of trust certificates**

**(a) Issuance**

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

**(b) Guarantee**

**(1) In general**

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

**(2) Limitation**

Each guarantee under this subsection shall be limited to the extent of principal and inter-

est on the guaranteed debentures that compose the trust or pool.

**(3) Prepayment or default**

In the event that 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 such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. 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**

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

**(d) Fees**

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

**(e) Subrogation and ownership rights**

**(1) Subrogation**

In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

**(2) Ownership rights**

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

**(f) Management and administration**

**(1) Registration**

The Administrator may provide for a central registration of all trust certificates issued under this section.

**(2) Contracting of functions**

**(A) In general**

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of 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 part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

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

Any agent performing functions on behalf of the Administrator under this paragraph

<sup>1</sup> So in original. Probably should be “the”.