

proved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2000.”

1997—Subsec. (b)(7)(A). Pub. L. 105–135, § 222(1), added subpar. (A) and struck out former subpar. (A) which read as follows: “assesses and collects a fee, which shall be payable by the borrower, in an amount equal to the lesser of—

“(i) 0.9375 percent per year of the outstanding balance of the loan; or

“(ii) such percentage per year of the outstanding balance of the loan as the Administrator may determine to be necessary to reduce the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to an amount that, taking into consideration any available appropriated funds, would permit the Administration to purchase or guarantee \$2,000,000,000 of debentures in fiscal year 1997; and”.

Subsec. (f). Pub. L. 105–135, § 222(2), substituted “2000” for “1997”.

1996—Subsec. (b)(7)(A). Pub. L. 104–208, § 202(b), substituted “equal to the lesser of—” for “equal to 0.125 percent per year of the outstanding balance of the loan” and added cls. (i) and (ii).

Subsec. (d). Pub. L. 104–208, § 202(c), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section.”

Subsec. (f). Pub. L. 104–208, § 202(d), added subsec. (f). Subsec. (g). Pub. L. 104–208, § 202(e), added subsec. (g). Subsec. (h). Pub. L. 104–208, § 203, added subsec. (h).

1995—Subsec. (b)(7). Pub. L. 104–36 added par. (7).

1994—Subsec. (c) to (e). Pub. L. 103–403 made technical amendment to Pub. L. 100–590, § 112(c). See 1988 Amendment note below.

1990—Subsec. (e)(3). Pub. L. 101–515 added par. (3).

1988—Subsec. (a)(2). Pub. L. 100–590, § 114, inserted two provisos that Administration not decline to issue such guarantee when ownership interests of small business concern and of property to be financed with loan are not identical, and that Administrator has determined on case-by-case basis that such ownership interest, guarantee, and loan, will substantially benefit small business concern.

Subsec. (c). Pub. L. 100–590, § 112(c)(B), formerly § 112(c)(1)(B), as amended by Pub. L. 103–403, added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–590, § 112(c)(A), formerly § 112(c)(1)(A), as amended by Pub. L. 103–403, redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–590, § 117, which directed substitution of “(1) For purposes of” for “For purposes of”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2), was executed to subsec. (e) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (e) by Pub. L. 100–590, § 112(c)(1).

Pub. L. 100–590, § 112(c)(A), formerly § 112(c)(1)(A), as amended by Pub. L. 103–403, redesignated former subsec. (d) as (e).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–306, § 2, Sept. 24, 2004, 118 Stat. 1131, provided in part that: “The amendment made by the preceding sentence [amending section 2 of Pub. L. 108–205, which amended this section] shall take effect as if included in the enactment of the section to which it relates.”

#### EFFECTIVE DATE OF 2001 AMENDMENT; USE OF FUNDS

Pub. L. 107–100, § 6(d), (e), Dec. 21, 2001, 115 Stat. 972, provided that:

“(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment

Act of 1958 [15 U.S.C. 697], shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]) of such amendments.

“(e) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 636 of this title] shall become effective on October 1, 2002.”

#### 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 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

#### TERMINATION DATE OF 1988 AMENDMENT

Pub. L. 100–590, title I, § 112(c), Nov. 3, 1988, 102 Stat. 2996, as amended by Pub. L. 101–515, title V, § 3, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755, which provided that the amendment made by paragraph (1), amending this section, was to be repealed on Oct. 1, 1997, was repealed by Pub. L. 103–403, title II, § 213(2), Oct. 22, 1994, 108 Stat. 4184.

#### EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

### § 697a. Private debenture sales

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 697 of this title as follows:

(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed \$200,000,000.

(2) Of the program levels otherwise authorized by law for each of fiscal years 1987 and 1988, an amount not to exceed \$425,000,000.

(3) All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title V, § 504, as added Pub. L. 99–272, title XVIII, § 18008(a), Apr. 7, 1986, 100

Stat. 366; amended Pub. L. 100-72, §2 July 11, 1987, 101 Stat. 477; Pub. L. 100-590, title I, §112(a), Nov. 3, 1988, 102 Stat. 2996.)

#### AMENDMENTS

1988—Pub. L. 100-590 inserted “Private debenture sales” as section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) Notwithstanding any other law, rule, or regulation, the Administration shall conduct a pilot program involving the sale to investors, either publicly or by private placement, of debentures guaranteed pursuant to section 697 of this title as follows—

“(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed \$200,000,000;

“(2) of the program levels otherwise authorized by law for fiscal year 1987, an amount not to exceed \$425,000,000; and

“(3) of the program levels otherwise authorized by law for fiscal year 1988, an amount not to exceed \$425,000,000.

“(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

“(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the pilot program authorized in this section,

“(2) any obligation which is an interest in any obligation described in paragraph (1), or

“(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).”

1987—Subsec. (a). Pub. L. 100-72 struck out “and” at end of par. (1), substituted “\$425,000,000; and” for “\$295,000,000.” in par. (2), and added par. (3).

#### REGULATIONS

Small Business Administration to promulgate final rules and regulations to implement this section within 60 days of Apr. 7, 1986, see section 18008(d)(2) of Pub. L. 99-272, set out as a note under section 697b of this title.

#### PILOT PROGRAM REPORT

Pub. L. 99-272, title XVIII, §18008(b), Apr. 7, 1986, 100 Stat. 367, required the Small Business Administration to report to the President and Congress on the pilot program under former 15 U.S.C. 697a involving debenture sales to investors not later than 90 days after the date of the last debenture sale in each fiscal year, and unless a report was made by Oct. 1 of 1986 and 1987, the Administration was to make an interim report by such dates.

### § 697b. Pooling of debentures

#### (a) Issuance; debentures composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this chapter: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

#### (b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited

to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, 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 Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

#### (c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

#### (d) Collection of fees

The Administration shall not collect any fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

#### (e) Subrogation rights; ownership rights in debentures

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

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

#### (f) Central registration requirements; regulation of brokers and dealers; electronic registration

(1) The Administration shall—

(A) provide for a central registration of all trust certificates sold pursuant to this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85-699, title V, §505, as added Pub. L. 99-272, title XVIII, §18008(c), Apr. 7, 1986, 100