

political subdivision, agency, or instrumentality of the State and including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or rural business investment company.

(13) Rural business concern

The term “rural business concern” means—

- (A) a public, private, or cooperative for-profit or nonprofit organization;
- (B) a for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or
- (C) any other person or entity;

that primarily operates in a rural area, as determined by the Secretary.

(14) Rural business investment company

The term “rural business investment company” means a company that—

- (A) has been granted final approval by the Secretary under section 2009cc-3(e) of this title; and
- (B) has entered into a participation agreement with the Secretary.

(15) Smaller enterprise

The term “smaller enterprise” means any rural business concern that, together with its affiliates—

- (A) has—
 - (i) a net financial worth of not more than \$6,000,000, as of the date on which assistance is provided under this subchapter to the rural business concern; and
 - (ii) an average net income for the 2-year period preceding the date on which assistance is provided under this subchapter to the rural business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the rural business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the total of—

(I) if the rural business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the rural business concern were a corporation; or

(B) satisfies the standard industrial classification size standards established by the

Administrator of the Small Business Administration for the industry in which the rural business concern is primarily engaged.

(Pub. L. 87-128, title III, §384A, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 388.)

§ 2009cc-1. Purposes

The purposes of the Rural Business Investment Program established under this subchapter are—

- (1) to promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in those areas by encouraging developmental venture capital investments in smaller enterprises primarily located in rural areas; and
- (2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in rural areas, by authorizing the Secretary—

(A) to enter into participation agreements with rural business investment companies;

(B) to guarantee debentures of rural business investment companies to enable each rural business investment company to make developmental venture capital investments in smaller enterprises in rural areas; and

(C) to make grants to rural business investment companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by rural business investment companies.

(Pub. L. 87-128, title III, §384B, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 391.)

§ 2009cc-2. Establishment

In accordance with this subchapter, the Secretary shall establish a Rural Business Investment Program, under which the Secretary may—

(1) enter into participation agreements with companies granted final approval under section 2009cc-3(e) of this title for the purposes set forth in section 2009cc-1 of this title;

(2) guarantee the debentures issued by rural business investment companies as provided in section 2009cc-4 of this title; and

(3) make grants to rural business investment companies, and to other entities, under section 2009cc-7 of this title.

(Pub. L. 87-128, title III, §384C, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 391.)

§ 2009cc-3. Selection of rural business investment companies

(a) Eligibility

A company shall be eligible to apply to participate, as a rural business investment company, in the program established under this subchapter if—

- (1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of such an entity;

(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

(3) the company will invest in enterprises that will create wealth and job opportunities in rural areas, with an emphasis on smaller enterprises.

(b) Application

To participate, as a rural business investment company, in the program established under this subchapter, a company meeting the eligibility requirements of subsection (a) shall submit an application to the Secretary that includes—

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified rural areas;

(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) and to seek to address the unmet equity capital needs of the communities served;

(4) a proposal describing how the company intends to use the grant funds provided under this subchapter to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, as necessary, on the staff of the company or from an outside entity;

(5) with respect to binding commitments to be made to the company under this subchapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the purposes of the program established under this subchapter;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and

(8) such other information as the Secretary may require.

(c) Status

Not later than 90 days after the initial receipt by the Secretary of an application under this section, the Secretary shall provide to the applicant a written report describing the status of the application and any requirements remaining for completion of the application.

(d) Matters considered

In reviewing and processing any application under this section, the Secretary—

(1) shall determine whether—

(A) the applicant meets the requirements of subsection (e); and

(B) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this subchapter;

(2) shall take into consideration—

(A) the need for and availability of financing for rural business concerns in the geographic area in which the applicant is to commence business;

(B) the general business reputation of the owners and management of the applicant; and

(C) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(3) shall not take into consideration any projected shortage or unavailability of grant funds or leverage.

(e) Approval; license

(1) In general

Except as provided in paragraph (2), the Secretary may approve an applicant to operate as a rural business investment company under this subchapter and license the applicant as a rural business investment company, if—

(A) the Secretary determines that the application satisfies the requirements of subsection (b);

(B) the area in which the rural business investment company is to conduct its operations, and establishment of branch offices or agencies (if authorized by the articles), are approved by the Secretary; and

(C) the applicant enters into a participation agreement with the Secretary.

(2) Capital requirements

(A) In general

Notwithstanding any other provision of this subchapter, the Secretary may approve an applicant to operate as a rural business investment company under this subchapter and designate the applicant as a rural business investment company, if the Secretary determines that the applicant—

(i) has private capital of more than \$2,500,000;

(ii) would otherwise be approved under this subchapter, except that the applicant does not satisfy the requirements of section 2009cc-8(c) of this title; and

(iii) has a viable business plan that—

(I) reasonably projects profitable operations; and

(II) has a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 2009cc-8(c) of this title.

(B) Leverage

An applicant approved under subparagraph (A) shall not be eligible to receive leverage under this subchapter until the applicant satisfies the requirements of section 2009cc-8(c) of this title.

(C) Grants

An applicant approved under subparagraph (A) shall be eligible for grants under section 2009cc-7 of this title in proportion to the private capital of the applicant, as determined by the Secretary.

(Pub. L. 87-128, title III, §384D, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 391.)

§ 2009cc-4. Debentures**(a) In general**

The Secretary may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any rural business investment company.

(b) Terms and conditions

The Secretary may make guarantees under this section on such terms and conditions as the Secretary considers 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

Section 2009g(i) of this title shall apply to any guarantee under this section.

(d) Maximum guarantee

Under this section, the Secretary may—

(1) guarantee the debentures issued by a rural business investment company only to the extent that the total face amount of outstanding guaranteed debentures of the rural business investment company does not exceed the lesser of—

- (A) 300 percent of the private capital of the rural business investment company; or
- (B) \$105,000,000; and

(2) provide for the use of discounted debentures.

(Pub. L. 87-128, title III, §384E, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 393.)

§ 2009cc-5. Issuance and guarantee of trust certificates**(a) Issuance**

The Secretary may issue trust certificates representing ownership of all or a fractional part of debentures issued by a rural business investment company and guaranteed by the Secretary under this subchapter, if the certificates are based on and backed by a trust or pool approved by the Secretary and composed solely of guaranteed debentures.

(b) Guarantee**(1) In general**

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

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default**(A) In general****(i) Authority to prepay**

A debenture may be prepaid at any time without penalty.

(ii) Reduction of guarantee

Subject to clause (i), if 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 the prepaid debenture represents in the trust or pool.

(B) Interest

Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Secretary only through the date of payment of the guarantee.

(C) Redemption

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

Section 2009g(i) of this title shall apply to any guarantee of a trust certificate issued by the Secretary under this section.

(d) Subrogation and ownership rights**(1) Subrogation**

If the Secretary pays a claim under a guarantee issued under this section, the claim shall be subrogated fully to the rights satisfied by the payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Secretary of the ownership rights of the Secretary in a debenture residing in a trust or pool against which 1 or more trust certificates are issued under this section.

(e) Management and administration**(1) Registration**

The Secretary shall provide for a central registration of all trust certificates issued under this section.

(2) Creation of pools

The Secretary may—

(A) maintain 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 subchapter; and

(B) issue trust certificates to facilitate the creation of those trusts or pools.

(3) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Secretary under this paragraph shall provide a fidelity bond or insurance in such amount as the Secretary considers to be necessary to fully protect the interests of the United States.

(4) Regulation of brokers and dealers

The Secretary may regulate brokers and dealers in trust certificates issued under this section.

(5) Electronic registration

Nothing in this subsection prohibits the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 87-128, title III, §384F, as added Pub. L. 107-171, title VI, §6029, May 13, 2002, 116 Stat. 393;