

1958 (15 U.S.C. 695 et seq.) during the previous fiscal year; and

“(3) clause (iv)(I)(aa) of such subparagraph (C) shall be applied by substituting ‘job creation and retention’ for ‘job creation.’”

### § 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), 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) 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) 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;

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made;

(6) the Administration approves each loan to be made from such proceeds; and

(7) with respect to each loan made from the proceeds of such debenture, the Administration—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

(i) the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; and

(II) the minimum amount necessary to reduce the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to zero; and

(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

#### (c) Commercial loan interest rate

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section.

#### (d) Charges for Administration expenses

##### (1) Level of charges

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).

##### (2) Participation fee

The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 696(3)(B)(i) of this title. Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

##### (3) Development company fee

The Administration shall collect annually from each development company a fee of 0.125

percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

**(e) “Qualified State or local development company” defined; exception for rural company; authority**

(1) For purposes of this section, the term “qualified State or local development company” means any State or local development company which, as determined by the Administration, has—

(A) a full-time professional staff;

(B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

(2) A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(3) Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under section 636(a) of this title, to service such loans and to charge a reasonable fee for servicing such loans.

**(f) Effective date**

The fees authorized by subsections (b) and (d) shall apply to financings approved by the Administration on or after October 1, 1996.

**(g) Calculation of subsidy rate**

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter.

**(h) Required actions upon default**

**(1) Initial actions**

Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

(A) take all necessary steps to bring such a loan current; or

(B) implement a formal written deferral agreement.

**(2) Purchase or acceleration of debenture**

Not later than the 65th day after the date on which a payment on a loan described in para-

graph (1) is due and not received, and absent a formal written deferral agreement, the administration<sup>1</sup> shall take all necessary steps to purchase or accelerate the debenture.

**(3) Prepayment penalties**

With respect to the portion of any project derived from funds set forth in section 696(3) of this title, the Administration—

(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

**(i) Two-year waiver of fees**

The Administration may not assess or collect any up front guarantee fee with respect to loans made under this subchapter during the 2-year period beginning on October 1, 2002.

(Pub. L. 85-699, title V, § 503, as added Pub. L. 96-302, title I, § 113(a), July 2, 1980, 94 Stat. 837; amended Pub. L. 100-590, title I, §§ 112(c), 114, 117(a), Nov. 3, 1988, 102 Stat. 2996-2998; Pub. L. 101-515, title V, § 8, Nov. 5, 1990, 104 Stat. 2144; Pub. L. 103-403, title II, § 213(1), Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104-36, § 6, Oct. 12, 1995, 109 Stat. 297; Pub. L. 104-208, div. D, title II, §§ 202(b)-(e), 203, Sept. 30, 1996, 110 Stat. 3009-735, 3009-736; Pub. L. 105-135, title II, § 222, Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106-554, § 1(a)(9) [title III, § 304], Dec. 21, 2000, 114 Stat. 2763, 2763A-684; Pub. L. 107-100, § 6(b), Dec. 21, 2001, 115 Stat. 971; Pub. L. 108-199, div. B, title VI, § 631, Jan. 23, 2004, 118 Stat. 100; Pub. L. 108-205, § 2, Mar. 15, 2004, 118 Stat. 553; Pub. L. 108-217, § 2, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108-306, § 2, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108-447, div. B, title V, div. K, title II, § 204, Dec. 8, 2004, 118 Stat. 2911, 3466.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsecs. (b)(7)(A)(ii) and (g), see References in Text note set out under section 661 of this title.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108-447, § 204, struck out “, but shall not apply to financings approved by the Administration on or after October 1, 2005” before period at end.

Pub. L. 108-447, title V, substituted “October 1, 2005” for “October 1, 2004”.

Pub. L. 108-217 substituted “October 1, 2004” for “May 21, 2004”.

Pub. L. 108-205, as amended by Pub. L. 108-306, substituted “May 21, 2004” for “March 15, 2004”.

Pub. L. 108-199 substituted “March 15, 2004” for “October 1, 2003” before period at end.

2001—Subsec. (b)(7)(A). Pub. L. 107-100, § 6(b)(1), designated existing provisions following “not exceed” as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), realigned margins, and added cl. (ii).

Subsec. (i). Pub. L. 107-100, § 6(b)(2), added subsec. (i).

2000—Subsec. (f). Pub. L. 106-554 amended heading and text of subsec. (f) generally. Prior to amendment, text

<sup>1</sup> So in original. Probably should be capitalized.

read as follows: “The fees authorized by subsections (b) and (c) of this section shall apply to financings approved 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).