

(B) has entered into a participation agreement with the Administrator.

**(5) Operational assistance**

The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development.

**(6) Participation agreement**

The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 689c(e) of this title, that—

(A) details the company’s operating plan and investment criteria; and

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

**(7) Specialized small business investment company**

The term “specialized small business investment company” means any small business investment company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

(C) was licensed under section 681(d) of this title, as in effect before September 30, 1996.

**(8) State**

The term “State” means such<sup>3</sup> of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85-699, title III, §351, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-653.)

REFERENCES IN TEXT

Section 632(p) of this title, referred to in par. (3)(B)(i), was redesignated section 657a(b) of this title by Pub. L. 115-91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

**§ 689a. Purposes**

The purposes of the New Markets Venture Capital Program established under this part are—

(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing

<sup>3</sup>So in original. Probably should be “each”.

the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

(A) to enter into participation agreements with New Markets Venture Capital companies;

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85-699, title III, §352, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

**§ 689b. Establishment**

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 689c(e) of this title for the purposes set forth in section 689a of this title;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 689d of this title; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 689g of this title.

(Pub. L. 85-699, title III, §353, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

**§ 689c. Selection of New Markets Venture Capital companies**

**(a) Eligibility**

A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

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

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

(3) the company has a primary objective of economic development of low-income geographic areas.

**(b) Application**

To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful develop-

mental venture capital investments in identified low-income geographic areas;

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

(3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;

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

(5) with respect to binding commitments to be made to the company under this part, 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 objectives of the program established under this part;

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

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

**(c) Conditional approval**

**(1) In general**

From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approval<sup>1</sup> companies to participate in the New Markets Venture Capital Program.

**(2) Selection criteria**

In selecting companies under paragraph (1), the Administrator shall consider the following:

(A) The likelihood that the company will meet the goal of its business plan.

(B) The experience and background of the company's management team.

(C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.

(D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.

(E) The likelihood that the company will be able to satisfy the conditions under subsection (d).

(F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.

(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 re-

sources 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 multiyear 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 show-

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

ing 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 out-

standing 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 interest 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

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