

“(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds, subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property: *Provided*, That the Administrator shall approve or deny a request for such purchase within a period of 10 business days; and

“(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices pursuant to a liquidation plan approved by the administrator in advance of its implementation. If the administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

“(d) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the pilot program, the Administrator shall—

“(1) have full authority to rescind the authority granted any development company under this section upon a 10-day written notice stating the reasons for the rescission; and

“(2) not later than 90 days after the admission of the development companies specified in subsection (b), implement the pilot program.

“(e) REPORT.—

“(1) IN GENERAL.—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]. The report shall include information relating to—

“(A) the total dollar amount of each loan and project liquidated;

“(B) the total dollar amount guaranteed by the Administration;

“(C) total dollar losses;

“(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project; and

“(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

“(2) REPORTING PERIOD.—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 [sic] fiscal quarters of the pilot program's operation after the date of implementation.”

[Section 204 of title II of div. D of Pub. L. 104-208, set out above, to cease to have effect beginning on the date on which final regulations are issued to carry out section 697g of this title, see section 1(a)(9) [title III, §307(b)] of Pub. L. 106-554, set out as a Regulations note under section 697g of this title.]

§ 696. Loans for plant acquisition, construction, conversion and expansion

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business con-

cerns and for a sound business purpose approved by the Administration.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) \$5,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv), or (v);

(ii) \$5,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 695(d)(3) of this title;

(iii) \$5,500,000 for each project of a small manufacturer;

(iv) \$5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

(v) \$5,500,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term “small manufacturer” means a small business concern—

(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(ii) all of the production facilities of which are located in the United States.

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 697 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

(I) State or local governments;

(II) banks or other financial institutions;

(III) foundations or other not-for-profit institutions; or

(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses¹ (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter shall provide—

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves

¹ So in original. Probably should be “clause”.

the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this subchapter, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(ii) APPRAISALS.—

(I) In general.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(aa) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than the Federal banking regulator appraisal threshold; or

(bb) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is equal to or less than the Federal banking regulator appraisal threshold, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(II) Federal banking regulator appraisal threshold defined.—For purposes of this clause, the term “Federal banking regulator appraisal threshold” means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small

business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subchapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(7) PERMISSIBLE DEBT REFINANCING.—

(A) IN GENERAL.—Any financing approved under this subchapter may include a limited amount of debt refinancing.

(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 100 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(ii) the existing indebtedness is collateralized by fixed assets;

(iii) the existing indebtedness was incurred for the benefit of the small business concern;

(iv) the financing under this subchapter will be used only for refinancing existing indebtedness or costs relating to the project financed under this subchapter;

(v) the financing under this subchapter will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(vii) the financing under section 697a of this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(C) REFINANCING NOT INVOLVING EXPANSIONS.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “borrower” means a small business concern that submits an application to a development company for financing under this subparagraph;

(II) the term “eligible fixed asset” means tangible property relating to which the Administrator may provide financing under this section; and

(III) the term “qualified debt” means indebtedness—

(aa) that was incurred not less than 6 months before the date of the application for assistance under this subparagraph;

(bb) that is a commercial loan;

(cc) the proceeds of which were used to acquire an eligible fixed asset;

(dd) that was incurred for the benefit of the small business concern; and

(ee) that is collateralized by eligible fixed assets.

(ii) **AUTHORITY.**—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

(II) the borrower has been in operation for all of the 2-year period ending on the date the loan application is submitted; and

(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

(iii) **FINANCING FOR BUSINESS EXPENSES.**—

(I) **FINANCING FOR BUSINESS EXPENSES.**—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

(II) **APPLICATION FOR FINANCING.**—An application for financing under subclause (I) shall include—

(aa) a specific description of the expenses for which the additional financing is requested; and

(bb) an itemization of the amount of each expense.

(III) **CONDITION ON ADDITIONAL FINANCING.**—A borrower may not use any part of the financing under this clause for non-business purposes.

(iv) **LOANS BASED ON JOBS.**—

(I) **JOB CREATION AND RETENTION GOALS.**—

(aa) **IN GENERAL.**—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 695 of this title.

(bb) **ALTERNATE JOB RETENTION GOAL.**—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$75,000.

(II) **NUMBER OF EMPLOYEES.**—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

(bb) the product obtained by multiplying—

(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph, by

(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

(v) **TOTAL AMOUNT OF LOANS.**—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.

(Pub. L. 85-699, title V, §502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87-27, §26, May 1, 1961, 75 Stat. 63; Pub. L. 87-341, §10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94-305, title I, §§108(a), 110, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95-507, title I, §112, Oct. 24, 1978, 92 Stat. 1760; Pub. L. 97-35, title XIX, §1909, Aug. 13, 1981, 95 Stat. 778; Pub. L. 100-418, title VIII, §8007(b), Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100-590, title I, §116(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997, 2998; Pub. L. 101-574, title II, §214(c), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 104-208, div. D, title II, §202(a), Sept. 30, 1996, 110 Stat. 3009-734; Pub. L. 105-135, title II, §221, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106-554, §1(a)(9) [title II, §208(b), title III, §303, title VIII, §802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-683, 2763A-684, 2763A-702; Pub. L. 108-447, div. K, title I, §104, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110-140, title XII, §1204(b), Dec. 19, 2007, 121 Stat. 1772; Pub. L. 111-5, div. A, title V, §504(a), Feb. 17, 2009, 123 Stat. 155; Pub. L. 111-240, title I, §§1112, 1122, Sept. 27, 2010, 124 Stat. 2508, 2510; Pub. L. 115-371, §2, Dec. 21, 2018, 132 Stat. 5106; Pub. L. 116-260, div. N, title III, §328(a)(2), Dec. 27, 2020, 134 Stat. 2038.)

AMENDMENTS

2020—Par. (7)(B). Pub. L. 116-260, §328(a)(2)(A), substituted “100 percent” for “50 percent” in introductory provisions.

Par. (7)(C). Pub. L. 116-260, §328(a)(2)(B), added subpar. (C).

2018—Par. (3)(E)(ii). Pub. L. 115-371 redesignated introductory provisions of cl. (ii) as subcl. (I) of cl. (ii) and inserted heading, redesignated former subcls. (I) and (II) as items (aa) and (bb), respectively, of subcl. (I) and realigned margins, in item (aa), substituted “is more than the Federal banking regulator appraisal threshold” for “is more than \$250,000”, in item (bb), substituted “is equal to or less than the Federal banking regulator appraisal threshold” for “is \$250,000 or less”, and added subcl. (II).

2010—Par. (2)(A)(i). Pub. L. 111-240, §1122(c), substituted “clause (ii), (iii), (iv), or (v)” for “subparagraph (B) or (C)”.

Pub. L. 111-240, §1112(1), substituted “\$5,000,000” for “\$1,500,000”.

Par. (2)(A)(ii). Pub. L. 111-240, §1112(2), substituted “\$5,000,000” for “\$2,000,000”.

Par. (2)(A)(iii) to (v). Pub. L. 111-240, §1112(3)–(5), substituted “\$5,500,000” for “\$4,000,000”.

Par. (7)(C). Pub. L. 111-240, §1122(b), struck out subpar. (C) relating to refinancing not involving expansions.

Pub. L. 111-240, §1122(a), added subpar. (C).

2009—Par. (7). Pub. L. 111-5 added par. (7).

2007—Par. (2)(A)(iv), (v). Pub. L. 110-140 added cls. (iv) and (v).

2004—Par. (2). Pub. L. 108-447 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Loans made by the Administration under this section shall be limited to \$1,000,000 for each such identifiable

small business concern, except loans meeting the criteria specified in section 695(d)(3) of this title, which shall be limited to \$1,300,000 for each such identifiable small business concern.”

2000—Par. (2). Pub. L. 106-554, §1(a)(9) [title III, §303], amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Loans made by the Administration under this section shall be limited to \$750,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to \$1,000,000 for each such identifiable small business concern.”

Par. (3)(E). Pub. L. 106-554, §1(a)(9) [title II, §208(b)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (6). Pub. L. 106-554, §1(a)(9) [title VIII, §802(b)], added par. (6).

1997—Par. (1). Pub. L. 105-135, §221(1), added par. (1) and struck out former par. (1) which read as follows: “The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration.”

Par. (3)(D), (E). Pub. L. 105-135, §221(2), added subpars. (D) and (E).

Par. (5). Pub. L. 105-135, §221(3), added par. (5).

1996—Par. (3). Pub. L. 104-208 inserted heading and amended text of par. (3) generally. Prior to amendment, text read as follows: “Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

“(A) State or local governments;

“(B) banks or other financial institutions;

“(C) foundations or other not-for-profit institutions; or

“(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter.”

1990—Par. (2). Pub. L. 101-574 struck out period at end and inserted “, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to \$1,000,000 for each such identifiable small business concern.”

1988—Pub. L. 100-590, §116(b)(1), inserted “Loans for plant acquisition, construction, conversion, and expansion” as section catchline.

Par. (2). Pub. L. 100-418 substituted “\$750,000” for “\$500,000”.

Par. (4). Pub. L. 100-590, §116(a), added par. (4).

1981—Pars. (1) to (4). Pub. L. 97-35 redesignated pars. (2) to (4) as (1) to (3), respectively. Former par. (1), which provided that all loans made shall be so secured as reasonably to assure repayment and that in agreements to participate in loans on a deferred basis, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement, was struck out.

Par. (5). Pub. L. 97-35 struck out par. (5) which provided that loans, including extensions and renewals, may be made for a period not exceeding twenty-five years and that an extension may be granted up to ten years, if such extension will aid in the orderly liquidation of the loan, and that the Administration may fix the rate of interest.

1978—Par. (4). Pub. L. 95-507 inserted provisions relating to derivation of community injection funds.

1976—Pub. L. 94-305, §108(a), inserted “acquisition,” after “plant” in introductory text.

Par. (3). Pub. L. 94-305, §110, substituted “\$500,000” for “\$350,000”.

1961—Par. (3). Pub. L. 87-341, §10(1), substituted “\$350,000” for “\$250,000”.

Par. (5). Pub. L. 87-341, §10(2), substituted “twenty-five” for “ten” before “years plus such additional period”.

Par. (6). Pub. L. 87-27 struck out par. (6) which provided for termination of authority of the Administra-

tion to make loans to local development companies after June 30, 1961.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title I, §1122(b), Sept. 27, 2010, 124 Stat. 2512, provided that the amendment made by section 1122(b) is effective 2 years after Sept. 27, 2010.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

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 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 1918 of Pub. L. 97-35, set out as a note under section 631 of this title.

REFINANCING SENIOR PROJECT DEBT

Pub. L. 116-260, div. N, title III, §328(c), Dec. 27, 2020, 134 Stat. 2040, provided that: “During the 1-year period beginning on the date of enactment of this Act [Dec. 27, 2020], a development company described in title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is authorized to allow the refinancing of a senior loan on an existing project in an amount that, when combined with the outstanding balance on the development company loan, is not more than 90 percent of the total loan to value. Proceeds of such refinancing can be used to support business operating expenses.”

REFINANCING NOT INVOLVING EXPANSIONS UNDER FORMER PAR. (7)(C)

Pub. L. 114-113, div. E, title V, §521(a), Dec. 18, 2015, 129 Stat. 2463, which provided that former par. (7)(C) of this section as in effect on Sept. 25, 2012, would be in effect in any fiscal year during which the cost to the Federal Government of making guarantees under such par. and section 697 of this title would be zero, with certain exceptions, was repealed by Pub. L. 116-260, div. N, title III, §328(a)(1), Dec. 27, 2020, 134 Stat. 2038.

§ 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 sis-