

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-590 effective on expiration of 180 days after Nov. 3, 1988, see section 209 of Pub. L. 100-590, set out as an Effective and Termination Dates of 1988 Amendment note under section 694b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as a note under section 633 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES**§ 695. State development companies****(a) Congressional finding and declaration of purpose**

The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this subchapter.

(b) Loans; obligations of development companies

The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) Maximum loans to development companies

The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d) Eligibility for assistance

In order to qualify for assistance under this subchapter, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

- (1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;
- (2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

(3) the achievement of one or more of the following public policy goals:

- (A) business district revitalization,
- (B) expansion of exports,
- (C) expansion of minority business development or women-owned business development,
- (D) rural development,
- (E) expansion of small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, especially service-disabled veterans, as defined in such section 632(q) of this title,
- (F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,
- (G) changes necessitated by Federal budget cutbacks, including defense related industries,
- (H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,
- (I) reduction of energy consumption by at least 10 percent,
- (J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact,
- (K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers, or
- (L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e) Creation or retention of jobs

- (1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$65,000 guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.
- (2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every \$65,000 guaranteed by the Administration.
- (3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas,

as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than \$75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

(6) As used in this subsection, the term "small manufacturer" means a small business concern—

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

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

(Pub. L. 85-699, title V, §501, Aug. 21, 1958, 72 Stat. 696; Pub. L. 100-590, title I, §115(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997; Pub. L. 101-574, title II, §214(a), (b), Nov. 15, 1990, 104 Stat. 2821; Pub. L. 106-50, title IV, §405, Aug. 17, 1999, 113 Stat. 246; Pub. L. 106-554, §1(a)(9) [title III, §302], Dec. 21, 2000, 114 Stat. 2763, 2763A-684; Pub. L. 108-447, div. K, title I, §105, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110-140, title XII, §1204(a), Dec. 19, 2007, 121 Stat. 1772; Pub. L. 111-5, div. A, title V, §504(b), Feb. 17, 2009, 123 Stat. 156; Pub. L. 111-240, title I, §1132, Sept. 27, 2010, 124 Stat. 2514.)

Editorial Notes

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

2010—Subsec. (d)(3)(L). Pub. L. 111-240 added subpar. (L).

2009—Subsec. (e)(1), (2). Pub. L. 111-5, which directed amendment of section 501(e)(1), (2) of the Small Business Investment Act by substituting "\$65,000" for "\$50,000", was executed by making the substitution in subsec. (e)(1), (2) of this section, which is section 501 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress.

2007—Subsec. (d)(3). Pub. L. 110-140, §1204(a)(4), inserted the following concluding provisions: "In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator."

Subsec. (d)(3)(I) to (K). Pub. L. 110-140, §1204(a)(1)-(3), added subpars. (I) to (K).

2004—Subsec. (e). Pub. L. 108-447 added subsec. (e).

2000—Subsec. (d)(3)(C). Pub. L. 106-554 inserted "or women-owned business development" before comma at end.

1999—Subsec. (d)(3)(E)-(H). Pub. L. 106-50 added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

1990—Subsec. (a). Pub. L. 101-574, §214(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Congress hereby finds and declares that the purpose of this subchapter is to foster

economic development in both urban and rural areas by providing long term financing for small business concerns through the development company program authorized by this subchapter. In order to carry out this objective, the Administration is hereby directed to place greater emphasis on the needs of rural areas and the promotion of the development company program in such areas, and is further directed to develop a plan for greater outreach of procurement and export trade seminars in such areas. As used in this subchapter, the term 'rural areas' means those localities with populations of less than 20,000."

Subsec. (d). Pub. L. 101-574, §214(b), added subsec. (d). 1988—Pub. L. 100-590 inserted "State development companies" as section catchline, added subsec. (a), and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

Statutory Notes and Related Subsidiaries

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.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Assistance made available under any financings made under this subchapter during 2-year period beginning Oct. 1, 2002, to be treated as a separate program of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) only, see section 6(c) of Pub. L. 107-100, set out as a note under section 636 of this title.

LOAN LIQUIDATION PILOT PROGRAM

Pub. L. 104-208, div. D, title II, §204, Sept. 30, 1996, 110 Stat. 3009-736, provided that:

"(a) IN GENERAL.—The Administrator shall carry out a loan liquidation pilot program (in this section referred to as the 'pilot program') in accordance with the requirements of this section.

"(b) SELECTION OF DEVELOPMENT COMPANIES.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Administrator shall establish a pilot program under which certain development companies authorized to make loans and issue debentures under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] are selected by the Administrator in accordance with this subsection to carry out loan liquidations.

"(2) CONFLICTS OF INTEREST.—The development companies selected under paragraph (1) shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender.

"(3) QUALIFICATIONS.—In order to qualify to participate in the pilot program under this section, each development company shall—

"(A) have not less than 6 years of experience in the program established by title V of the Small Business Investment Act of 1958;

"(B) have made, during the 6 most recent fiscal years, an average of not less than 10 loans per year through the program established by such title V of the Small Business Investment Act of 1958;

"(C) have not less than 2 years of experience in liquidating loans under the authority of a Federal, State, or other lending program; and

"(D) meet such other requirements as the Administration may establish.

"(c) AUTHORITY OF DEVELOPMENT COMPANIES.—The development companies selected under subsection (b) shall, for loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] that are in default after the date of enactment of this Act [Sept. 30, 1996], be authorized to—

“(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”.