

§ 2009bb–13. Termination of authority

The authority provided by this subchapter terminates effective October 1, 2018.

(Pub. L. 87–128, title III, §383O, formerly §383N, as added Pub. L. 107–171, title VI, §6028, May 13, 2002, 116 Stat. 387; renumbered §383O and amended Pub. L. 110–234, title VI, §6026(c)(1)(A), (k), May 22, 2008, 122 Stat. 1178, 1182, and Pub. L. 110–246, §4(a), title VI, §6026(c)(1)(A), (k), June 18, 2008, 122 Stat. 1664, 1940, 1943; Pub. L. 113–79, title VI, §6027(c), Feb. 7, 2014, 128 Stat. 850.)

Editorial Notes**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2014—Pub. L. 113–79 substituted “2018” for “2012”.
2008—Pub. L. 110–246, §6026(k), substituted “2012” for “2007”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

SUBCHAPTER VIII—RURAL BUSINESS INVESTMENT PROGRAM**§ 2009cc. Definitions**

In this subchapter:

(1) Articles

The term “articles” means articles of incorporation for an incorporated body or the functional equivalent or other similar documents specified by the Secretary for other business entities.

(2) Developmental capital

The term “developmental capital” means capital in the form of equity capital investments in rural business investment companies with an objective of fostering economic development in rural areas.

(3) Employee welfare benefit plan; pension plan**(A) In general**

The terms “employee welfare benefit plan” and “pension plan” have the meanings given the terms in section 1002 of title 29.

(B) Inclusions

The terms “employee welfare benefit plan” and “pension plan” include—

- (i) public and private pension or retirement plans subject to this subchapter; and
- (ii) similar plans not covered by this subchapter that have been established, and that are maintained, by the Federal Government or any State (including by a political subdivision, agency, or instrumentality of the Federal Government or a State) for the benefit of employees.

(4) Equity capital

The term “equity capital” means—

(A) common or preferred stock or a similar instrument, including subordinated debt with equity features; and

(B) any other type of equity-like financing that might be necessary to facilitate the purposes of this Act, excluding financing such as senior debt or other types of financing that competes with routine loanmaking of commercial lenders.

(5) Leverage

The term “leverage” includes—

(A) debentures purchased or guaranteed by the Secretary;

(B) participating securities purchased or guaranteed by the Secretary; and

(C) preferred securities outstanding as of May 13, 2002.

(6) License

The term “license” means a license issued by the Secretary as provided in section 2009cc–3(e) of this title.

(7) Limited liability company

The term “limited liability company” means a business entity that is organized and operating in accordance with a State limited liability company law approved by the Secretary.

(8) Member

The term “member” means, with respect to a rural business investment company that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company.

(9) Operational assistance

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

(10) Participation agreement

The term “participation agreement” means an agreement, between the Secretary and a rural business investment company granted final approval under section 2009cc–3(e) of this title, that requires the rural business investment company to make investments in smaller enterprises in rural areas.

(11) Private capital**(A) In general**

The term “private capital” means the total of—

(i)(I) the paid-in capital and paid-in surplus of a corporate rural business investment company;

(II) the contributed capital of the partners of a partnership rural business investment company; or

(III) the equity investment of the members of a limited liability company rural business investment company; and

(ii) unfunded binding commitments from investors that meet criteria established by the Secretary to contribute capital to the rural business investment company, except that—

(I) unfunded commitments may be counted as private capital for purposes of approval by the Secretary of any request for leverage; but

(II) leverage shall not be funded based on the commitments.

(B) Exclusions

The term “private capital” does not include—

(i) any funds borrowed by a rural business investment company from any source;

(ii) any funds obtained through the issuance of leverage; or

(iii) any funds obtained directly or indirectly from the Federal Government or any State (including by a political subdivision, agency, or instrumentality of the Federal Government or a State), except for—

(I) funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored enterprise established prior to May 13, 2002;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the rural business investment company).

(12) Qualified nonprivate funds

The term “qualified nonprivate funds” means any—

(A) funds directly or indirectly invested in any applicant or rural business investment company on or before May 13, 2002, by any Federal agency, other than the Department of Agriculture, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term “private capital”; and

(B) funds invested in any applicant or rural business investment company by 1 or more entities of any State (including by a 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; amended Pub. L. 115-334, title VI, § 6426(a), Dec. 20, 2018, 132 Stat. 4770.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in par. (4)(B), means Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 294, known as the Agricultural Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 1911 of this title and Tables.

AMENDMENTS

2018—Par. (2). Pub. L. 115-334, § 6426(a)(1), struck out “venture” after “Developmental” in heading and after “developmental” in text.

Par. (4). Pub. L. 115-334, § 6426(a)(2), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “The term ‘equity capital’ means common or preferred stock or a similar instrument, including subordinated debt with equity features.”

§ 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 capital investments in smaller enterprises primarily located in rural areas; and

(2) to establish a developmental 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 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; amended Pub. L. 115-334, title VI, §6426(b), Dec. 20, 2018, 132 Stat. 4770.)

Editorial Notes**AMENDMENTS**

Par. (1). Pub. L. 115-334, §6426(b)(1), struck out “venture” before “capital investments”.

Par. (2). Pub. L. 115-334, §6426(b)(2)(A), struck out “venture” before “capital program” in introductory provisions.

Par. (2)(B). Pub. L. 115-334, §6426(b)(2)(B), struck out “venture” before “capital investments”.

§ 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 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,