

## **Section by Section**

# **Small Business Financing and Investment Act of 2009**

## **Title I – Small Business Lending Enhancements**

### **Section 101. The Small Lender Outreach Division**

This provision will direct the Administrator to establish a program within the agency's regional, district, and branch offices to support these offices in assisting small lenders who do not participate in the preferred lenders program (PLP) to make 7(a) loans. The Committee intends for this program to be established in an existing element of SBA and does not intend for a new division to be created for this purpose.

### **Section 102. The Rural Lender Outreach Program**

This provision would establish an SBA lending program focused on lending to small businesses located in rural areas. The program would be administered by the Small Bank Outreach Division established under this bill. The RLO program would improve upon conventional 7(a) loans to encourage increased lender participation in the 7(a) program by reducing application burdens for borrowers and lenders in rural areas, by expediting the lending process, and enhancing loans made under this program by increasing the guarantee to 90 percent on amounts up to \$250,000. Loans made under this program would use abbreviated application and documentation requirements and require the SBA to approve or decline the loan within 36 hours.

### **Section 103. Community Express Program Made Permanent**

This provision would make the Community Express pilot program permanent. The program will provide loans to businesses majority owned by women, socially or economically disadvantaged individuals, or U.S. military veterans without regard to their geographic location. Over the past five years, the SBA has relied on the Community Express pilot program as a key mechanism for making loans to these businesses. The Committee believes that this program must be maintained given the decline in both the number and dollar amount of loans that the SBA has made to these groups. From FY 2007 to FY 2008, the number of 7(a) loans made to minority-owned businesses declined by over 33 percent, while the number of loans made to women-owned businesses declined by 29 percent. During the same time period, the number of 7(a) loans to veteran-owned businesses declined by more than 22 percent.

### **Section 104. Increased Veteran Participation Loan Program Made Permanent**

This provision would amend the Increased Veteran Participation Program (IVPP) under section 7(a)(32) of the Small Business Act to permanently establish this initiative as a sub-program of the 7(a) Loan Program. This section will also provide permanent authority to reduce fees on IVPP loans by half and increase the guarantee to 90 percent

for loans made to veteran-owned small businesses. The Committee believes that this program will significantly ameliorate the declining numbers of military veterans participating in the 7(a) program, particularly at a time when more veterans are returning from active deployments in Iraq and Afghanistan and are seeking capital for their small businesses.

#### **Section 105. Leasing Policy**

This section will clarify permissible uses of 7(a) financings for facilities that will subsequently be leased by the small business concern. Under this provision, a 7(a) program loan may be used to acquire or construct a facility, so long as the small business concern receiving the loan permanently occupies no less than 50 percent of the project property and may temporarily lease no more than 50 percent of the project property

#### **Section 106. National Lender Training Program**

This section would require the SBA's ten regional offices to carry out a lender training program to train new and participating lenders on SBA's lending systems, policies, and procedures. Costs for this program can be covered by fees, and the program cannot be contracted out to non-governmental entities.

#### **Section 107. Applications for Repurchase of Loans**

This section shall require the SBA to make prompt payment on repurchase applications, and to make a final determination to approve or deny a complete repurchase application within 45 days of receipt. Applications not receiving a final determination within 45 days shall be deemed approved. This policy will ensure that the SBA provides some degree of certainty for the guarantees that lenders rely upon when making 7(a) loans. In recent years, untimely payments and denials on guaranty purchases have all but eliminated the meager margins that lenders relied upon to economically justify participation in the 7(a) program.

#### **Section 108. Alternative Size Standards**

This section would require the SBA to develop a size standard for the 7(a) program that includes some consideration of the maximum tangible net worth and average net income of a business as alternative for lenders to use instead of the existing size standards for 7(a) loans, which vary depending on the industry in which the business operates. Such an alternative already exists for lenders making loans under the 504 loan program, and this provision would permit 7(a) lenders to use that existing standard until such time as the SBA establishes the new standard required by this section.

#### **Section 109. Pilot Program Authority**

This section would limit the maximum number, term, and dollar amount of SBA pilot programs, and would require that any new pilot programs, or any changes to an existing pilot program, be made pursuant to the notice and comment rulemaking provisions of Section 553(b) of Title V of the United States Code.

### **Section 110. Loans to Cooperatives**

Currently, SBA regulations governing the treatment of cooperative businesses are inconsistent with the treatment given other businesses. This section will simplify the eligibility requirements for cooperatives to receive 7(a) loans by eliminating the distinctions between “consumer,” “marketing,” and “producer” cooperatives and instead permitting any cooperative that is not organized as a tax exempt entity, that is engaged in a business activity, that offers its goods or services to the public, and that obtains financial benefits for itself as an entity as well as for its members. The cooperative must be eligible under the SBA’s size standards, and if any of its members are business entities, they must also meet the SBA’s size standards.

### **Section 111. Capital Backstop Program**

Under this section, the SBA would be required to establish a process by which potential borrowers submit loan applications directly to the agency. The SBA would then be authorized to engage in application processing and preliminary underwriting of these applications before forwarding the applications to private sector SBA lenders within 100 miles of the principal office of the potential borrower. If no such lenders approve these loan applications and undertake the loans, the SBA is required to provide such applications to preferred SBA lenders nationwide. If after 60 days, no private sector lender approves these loans, the SBA is authorized to underwrite, close, and fund the loan.

The SBA would then be required to offer closed and funded loans to the private sector through asset sales convened semi-annually. The SBA is authorized to contract with private sector vendors for due diligence, asset valuation, and other services related to the asset sales. The SBA would be prohibited from selling loans for less than 90 percent of the net present value, as determined and certified by a qualified third-party entity, of such assets through the asset sales. For loans that were unable to be sold through the asset sales, the SBA would be required to maintain and service such loans.

This program will be subject to the Federal Credit Reform Act of 1990, meaning that the program will carry sufficient fees to reduce the cost to zero and that the program level for lending would be indefinite. The program would also only take effect in the event that the National Bureau of Economic Research has determined the U.S. economy to be in a recession and the annual program level volume in the SBA’s 7(a) loan program has declined by 30 percent or more compared to the same time in the previous fiscal year. This program will also be carried out using a new loan making reserve cadre authority to ensure that this program does not disrupt the SBA’s administration of other capital access programs.

### **Section 112. Loans to Finance Goodwill**

Under this provision, the SBA would be prohibited from applying disparate application, processing, or approval standards on loans used to finance goodwill.

### **Section 113. Appellate Process and Ombudsman**

This section would establish an Office of the Agency Ombudsman within the SBA. The Agency Ombudsman would be organized around the principle of dispute resolution within the SBA's various lending and investment programs. This office would be established to ensure that the private sector partners that administer the SBA's programs receive fair and expeditious resolution of their complaints. The Ombudsman would report directly to the Administrator and would serve as an objective arbiter to resolve appeals independently of the SBA's program administration offices through a separate appeals process. This process is designed to provide participants with an independent, fair, and binding means of settling disagreements that can arise from the SBA's oversight or decision making functions. This would enable program participants to make informal inquiries or file formal appeals in the strictest confidence without fear of retaliation.

### **Section 114. Extension of Recovery and Relief Loan Benefits**

This section would extend the increased guarantees and eliminated borrower fee provisions that were established under Sections 501 and 502 of the American Recovery and Reinvestment Act of 2009 through the end of fiscal year 2011, providing small businesses and lenders with continued support to make capital available as the economy recovers.

### **Section 115. Reduced Documentation for Business Stabilization Loans**

This provision will streamline and improve the application process for Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) by requiring the SBA to develop a single page application for these loans and reduced documentation requirements.

### **Section 116. Expanded Eligibility for Business Stabilization Loans**

This provision will expand the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) to permit loan funds to be used for the purpose of making payments of principal and interest on loans that are guaranteed by the Federal government.

### **Section 117. Increased Amount for Business Stabilization Loans**

This provision will increase the maximum loan size for the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) from the current level of \$35,000 to \$50,000.

### **Section 118. Extension of Business Stabilization Loans**

This provision will extend the Business Stabilization loans established under the American Recovery and Reinvestment Act (ARRA) through the end of fiscal year 2011.

### **Section 119. Secondary Market Lending Authority Made Permanent**

This section would make the Secondary Market Lending Authority established under Section 509 of the American Recovery and Reinvestment Act of 2009 permanent, providing the SBA with permanent authority to make liquidity available to brokers and dealers who purchase and sell SBA 7(a) loans and stabilizing this vital component of the small business lending market.

### **Section 120. SBA Secondary Market Lending Authority Expanded**

This section would amend the Secondary Market Lending Authority established under Section 509 of the American Recovery and Reinvestment Act of 2009 to permit any 7(a) lender to apply for and receive loans authorized by this section. Additionally, the Secondary Market Lending Authority is amended to provide the SBA with authority to use appropriated funds for the purpose of reducing the cost of loans made under this program.

### **Section 121. Increased Loan Limits**

This provision will increase the maximum gross loan amount for 7(a) loans from the current level of \$2 million to \$3 million.

### **Section 122. Real Estate Appraisals**

This section would require an appraisal by a licensed or certified appraiser for any 7(a) financing secured by commercial real estate with an estimated value in excess of \$400,000.

### **Section 123. Additional Support for Express Loan Program**

This provision will permit the SBA to retain a 25 basis point fee that is currently charged by lenders for the purpose of reducing costs associated with the Express Loans.

### **Section 124. Authorization of Appropriations**

This section would authorize a program level of \$17.5 billion in the 7(a) loan program through fiscal year 2011.

## **Title II – CDC Economic Development Loan Program**

## **Subtitle A – General Provisions**

### **Section 201. Program Levels**

This section will authorize the 504/Certified Development Company Program levels at \$9 billion in financings in fiscal year 2010, \$10 billion in financings in fiscal year 2011. These levels should be adequate given current and projected levels of program activity.

### **Section 202. Definitions**

This provision codifies the definition of a Certified Development Company (CDC) as a company which the SBA has determined meets the criteria of the new section 506 of the Small Business Investment Act of 1958 (SBIA). The Committee believes that this change is necessary because the SBIA does not define CDCs in general terms.

## **Subtitle B – Certified Development Companies**

### **Section 211. Certified Development Companies**

This provision specifies criteria that a development company must meet in order to issue debentures. A CDC must have fewer than 200 employees and must serve its local community by fostering economic development, creating and preserving jobs, and stimulating private community investment. Except for CDCs certified prior to January 1, 1987, CDCs must operate as not-for-profit entities and must maintain in good standing with all laws, including taxation requirements, in their state of incorporation. This provision will also establish requirements for CDC membership and will require that CDCs be professionally managed and maintain a board of directors that represents its membership.

This provision will require CDCs to maintain a directorate with ties to the states in which it operates and imposes ethical requirements on CDCs and their employees including a prohibition on persons serving as an officer, director or chief executive officer of more than one certified development company.

### **Section 213. Accredited Lenders Program**

This provision codifies the existing accredited lenders program, by which CDCs that meet the accreditation criteria must follow in order to participate in the ACL program, which permits skilled, experienced, and well staffed CDCs in good-standing to make loans with accelerated approval and closing times.

### **Section 214. Premier Certified Development Program**

This provision codifies the existing Premier Certified Development Program (PCL) by which accredited lenders can make completely delegated loan decisions.

### **Section 215. Multi State Operations**

This provision establishes criteria for subsequent development company expansion which requires that each additional State be contiguous to the State of incorporation, and require the CDC to add to its membership in the State of incorporation at least 25 members from each additional State, and must add to its board in the State of incorporation at least one member from each additional State.

### **Section 216. Guaranty of Debentures**

This provision codifies the existing authority for the SBA to issue guarantees for the full amount of CDC debentures issued under the program as well as the fee structure which sets the program subsidy at zero. It would also change the existing law to provide borrowers in the 504 program the option to include loan and debenture closing costs, other than borrower's attorney fees, in the debenture. The Committee believes that this provision will improve efficiency and convenience in the 504 program and result in increased participation in the program.

### **Section 217. Economic Development Through Debentures**

This section codifies the economic development mission that is central to the CDC program. Among these objectives, this provision will allow the ownership interest of two or more owners to be combined to determine whether the small business is at least 51 percent owned by minorities, women or veterans in order to qualify for assistance as a public policy goal. The Committee believes that this change is consistent with the 504 program's existing provision which permits small businesses to qualify as a public policy goal for 504 program financing by majority ownership of a single woman, minority, or veteran.

This provision also designates financings in areas eligible for investment under the New Markets Tax Credit Program as a public policy goal under the 504 program, thus making these financings eligible for a larger maximum debenture limit. The Committee believes that this change is consistent with the 504 program's existing purpose of fostering community development and economic investment.

This would also permit 504/CDC project financings to be used to acquire the stock of a corporation, so long as the amount of the financing used to acquire stock does not exceed the fixed asset value attributable to such assets.

### **Section 218. Project Funding Requirements**

This section would increase the maximum loan sizes for 504/CDC financings from \$3.75 million for conventional projects and \$5 million for projects that meet the public policy goals in the Small Business Investment Act to \$7 and \$10 million respectively. These increases are commensurate with the rate of inflation since the maximum loan sizes were last established.

This provision would also increase the maximum loan sizes for financings for projects that improve energy efficiency, produce renewable energy, or fund small manufacturing to \$20 million. Businesses located in New Markets (i.e. low income) areas could receive a maximum financing of \$12.5 million, and the provision would also create a new financing of up to \$25 million for small businesses that constitute a major source of employment.

This provision will also enable borrowers to provide more than the required minimum amount of equity and to use the excess equity to reduce the amount of the first mortgage loan, as long as the amount of the first mortgage loan would not be reduced to less than the amount of the SBA guaranteed portion of the loan. The Committee intends for this change to enable high-risk borrowers or start-up businesses to lower the costs associated with 504 financings. Additionally, the Committee believes that this provision will permit more borrowers to qualify for financing in the 504 program.

This section will clarify permissible uses of 504 financings for facilities that will subsequently be leased by the small business concern. Under this provision, a 504/CDC program loan may be used to acquire or construct a facility so long as the small business concern receiving the loan permanently occupies no less than 50 percent of the project property and may temporarily lease no more than 50 percent of the project property.

A CDC borrower will also be able to obtain financing in the maximum amount permitted under the 504 program and also to obtain a 7(a) loan in the maximum amount permitted under that program. This provision will provide entrepreneurs with increased access to affordable capital in amounts necessary to support capital intensive small businesses. This is consistent with the express purpose of the 7(a) and 504 programs, particularly since no existing SBA program can adequately fulfill this role by itself.

This section makes a conforming amendment to make the uniform leasing policy contained within the Small Business Investment Act consistent with the policy established by this act within the Small Business Act. This would require an appraisal by a licensed or certified appraiser for any 504/CDC financing secured by commercial real estate with an estimated value in excess of \$400,000.

### **Section 219. Private Debenture Sales and Pooling of Debentures**

This provision codifies the existing authority by which the SBA pools and sells debentures issued under the program with full guarantees on trust certificates issued from the pools.

### **Section 220. Foreclosure and Liquidation of Loans**

Because the CDC program operates as a zero subsidy program, it is essential that defaulted loans be liquidated and recovered in an effectively and timely manner. This provision will require a CDC either to foreclose and liquidate defaulted loans which it



made or to contract with a qualified third-party to do so. This provision also imposes a requirement that SBA reimburse a CDC for all expenses incurred by the CDC if the expenses were approved by SBA in advance or were reasonable. The requirement will not be effective, however, until the SBA adopts and implements a program to compensate and reimburse the CDC for expenses associated with foreclosure and liquidation. This section will strengthen the 504 program by permitting CDCs to play an active role in ensuring that defaulted 504 loans are liquidated in an efficient manner.

This provision would provide continuing delegated authority for the central servicing agent to continue to collect and disburse funds or payments received on defaulted loans.

### **Section 221. Reports and Regulations**

This provision will require the SBA to complete annual reports on the PCL program, the liquidation efforts of the agency, and the number of CDC project financings made in combination with 7(a) loans.

This provision would also require the SBA to comply with the notice and comment rulemaking provisions of the Administrative Procedures Act before amending any regulation affecting the CDC program.

### **Section 222. Program Name**

This provision would establish the official title of the program as the CDC Economic Development Loan Program and require the SBA to modify all references to the program to conform to this change. The Committee believes that this change will clarify that loans made under section 504 of the Small Business Investment Act of 1958 may be used for the purpose of stimulating community economic development.

## **Subtitle C – Miscellaneous**

### **Section 231. Report on Standard Operating Procedures**

This provision would require the SBA to prepare a report with 180 days of enactment of the Act that identifies the regulatory authority for which each standard operating procedure affecting the CDC program has been issued.

### **Section 232. Alternative Size Standard**

This provision would require the SBA to conduct a report and study on the efficacy of the current alternative size standards of the CDC program.

## **Title III – Microloan Program**

### **Section 301. Microloan Credit Building Initiative**

The inability of micro-intermediaries to provide borrower information to credit reporting agencies limits the potential of many low-income borrowers to improve and strengthen their credit history, which further limits their access to affordable capital and their future success. Because most micro-intermediaries have small portfolios of loans and only brief repayment records, the cost of reporting microloan histories to major credit bureaus is often impractical.

Under this section, the SBA will require Intermediaries to transmit credit reporting information. The SBA will help Intermediaries in the program to devise a method of providing and recording such records with the credit agencies. The SBA will have discretion to determine whether to aggregate and report the data itself, or to negotiate agreements for the intermediaries to collect the necessary information and report directly.

### **Section 302. Flexible Credit Terms**

This provision would remove existing requirements that all microloans be “short-term,” and provides lenders with authority to offer more flexible loan instruments to entrepreneurs. These potentially longer term loans would allow lenders to adjust the term to the specific needs and sophistication of the borrower enhancing participation in the program, particularly among seasonal businesses or borrowers that rely upon revolving credit. With greater flexibility in repayment terms, borrowers have greater control to manage their debt obligations, which can potentially enhance their profitability and success.

### **Section 303. Increased Program Participation**

The intent of this provision is to increase the number of intermediaries that can qualify for the program with no reduction in the quality and experience of participating Intermediaries. If an aspiring intermediary (generally a non-profit organization) has no direct experience in microlending and technical assistance, then it can hire trained employees with considerable, equivalent experience and still qualify.

This provision would broaden the eligibility requirements for micro-intermediaries to help expand access to the Microloan program. This section would permit participation from micro-intermediaries that have at least 1 year of experience making microloans to startup, newly established, or growing small business concerns, or that have a full-time employee who has not less than 3 years experience in managing a portfolio of loans to startup, newly established, or growing small business concerns and who also has at least 1 year experience providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers. Microlending experience should include, but is not limited to, management or oversight of a loan fund. Microlending experience may also include requirements as per the discretion of SBA.

### **Section 304. Increased Limit on Intermediary Borrowing**

The tightening credit market has significantly multiplied the need for access to capital — particularly among entrepreneurs whose credit scores may have been hurt by job loss or foreclosure. Currently, however, large Intermediaries have reported a strong demand for Microlans, but have had their lending capacity constrained by the current program limits. Under this section, the maximum obligation for participating intermediaries to the SBA may not exceed a total of \$7 million, an increase from the current statutory limit of \$3.5 million. In appropriate cases, the Administrator will have discretion to increase the limit to \$10 million for qualified and experienced intermediaries (i.e. those that have been in existence for more than a year), and first-year Intermediaries, will have their maximum cap increased from \$750,000 to \$1 million.

### **Section 305. Expanded Borrower Education Assistance**

This provision would increase the percentage of the technical assistance grant that a micro-intermediary can spend on providing information and technical assistance to small business concerns that are prospective borrowers. The limitation is currently 25 percent. This provision would increase that amount to 35 percent. This section also increases the percentage of the technical assistance grant that a micro-intermediary can use for the provision of technical assistance through third-party providers – from 25 percent to 35 percent.

Together, these provisions will greatly increase the amount that micro-intermediaries use to provide borrowers with training, financial education, and guidance that make them better borrowers. This ultimately reduces the risk of loss in the program and helps micro-intermediaries serve more borrowers while tailoring their service to the borrower's specific needs.

### **Section 306. Interest Rates and Loan Size**

This section would increase the required average loan size that Intermediaries must meet to qualify for subsidized interest rates under the program from the current level of \$7,500 to \$10,000. This change would result in larger loan amounts flowing to small businesses that borrow under the program.

### **Section 307. Reporting Requirement**

This section will require the SBA to make an annual report to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship that contains information on the Microloan program. At a minimum, this report should contain information regarding the number and dollar amount of loans made under the program, the number of jobs created or retained under the program and a break-down program performance by number and dollar amount of loans made to women, veterans of the U.S. military, and minority-owned businesses. These statistics should be further broken down state-by-state as well as by each intermediary that participates in the program. This report should also contain information on the number of business

enterprises that received a microloan and that subsequently achieved success as a going concern.

Currently, very little information is available on the Microloan Program. This drought of data makes it difficult for the microenterprise field to focus on areas of improvement and efficiency.

### **Section 308. Surplus Interest Rate Subsidy for Businesses**

Under this section, the Administrator will be authorized to use surplus funds for the purpose of reducing the interest rates paid by entrepreneurs who borrow from Intermediaries if, at the beginning of the third quarter of a fiscal year, the Administrator determines that any portion of the amount made available to carry out the 7(m) program is unlikely to be used during that fiscal year.

### **Section 309. Authorization of Appropriations**

This section would authorize the SBA to make \$110 million in loans under the Microloan program and provide \$80 million in technical assistance grants for each of fiscal years 2010 and 2011.

## **Title IV – Small Business Investment Company Program**

### **Section 401. Increased Investments From States**

This section would raise the current cap on the amount that state funds can invest in SBICs from 33 percent to 40 percent. This is particularly important given the current economic climate and the demand from state entities for safe and sound investment vehicles. This would also have the added benefit of increasing the amount of capital available for SBIC investment in small businesses.

### **Section 402. Expedited Licensing For Experienced Applicants**

The existing licensing process is perhaps the single-greatest impairment to the SBIC program. The licensing and relicensing process has become so cumbersome that many successful SBICs leave the program rather than deal with the arduous and lengthy task of SBA licensing. In FY 2008, only 6 SBICs were licensed representing over a 90 percent decrease in the number of licensees from the peak of the 1990's. Only one of these was for a new SBIC fund. The remaining five were license renewals for successful funds already participating in the program, and several of these renewals took over a year to complete.

This section will create an expedited licensing process as an incentive to keep successful SBICs investing in domestic small businesses. Under this framework, an existing licensed SBIC in good-standing with the SBA would be granted a new license by the Administrator if two-thirds of the management team will remain in place, no additional

licenses have been granted to the fund in the last 3 years, and the full management team clears a criminal background check. The new fund would still need to raise the requisite capital from the private sector and follow an SBA-approved investment plan.

### **Section 403. Revised Leverage Limitations for Successful SBICs**

This section will revise the SBIC leverage limitations to create an incentive for successful, well-managed SBICs to remain in the program. Under this section, SBA approved SBICs will be authorized to access the maximum leverage limits for any “family” of SBIC funds – those that are controlled by the same management team. The limits would also be increased for existing SBICs and for SBICs under control of a Business Development Company, with an additional provision for regular inflationary adjustments.

In order to access these increased limits, all SBIC funds under management must be in good standing with the SBA and any increased leverage would be subject to SBA approval.

### **Section 404. Consistency for Cost Control**

This section would correct inconsistencies between the SBA’s regulations and the Small Business Investment Act to clarify the terms of a “default” on an SBIC loan. Although the SBA’s current regulations permit SBICs to charge a default interest rate (13 C.F.R. 107.885), the terms of a default are not consistent with market terms. This places SBIC funds at a competitive disadvantage with non-SBA regulated investment funds and makes it more difficult for SBICs to recover on defaulted loans, which, in turn, increases costs to the program.

### **Section 405. Investments in Veteran Owned Small Businesses**

This section would provide SBICs that invest in veteran-owned small businesses to receive the same increased leverage limitations that is currently available to SBICs that invest in businesses located in Low and Moderate Income areas (LMI). This is intended to promote investment in veteran-owned businesses, a demographic that the program has had significant difficulty in reaching.

### **Section 406. Limitations On Prepayment**

Voluntary prepayments are often common and necessary for proper loan administration and servicing. Currently, SBIC investments are authorized to be prepaid by the businesses that receive these loans. Under the SBA’s regulations, however, all prepayments have been conditioned upon SBA pre-approval of minimum prepayment amounts and minimum notice periods.

This section would clarify that no prior approval is necessary for customary minimum prepayment amounts and would establish a *de minimis* amount (the lesser of \$50,000 or 5

percent of the principal amount) for other prepayment amounts that would not require written pre-approval or advance notice.

#### **Section 407. Investment With Certain Passive Entities**

This provision would permit SBICs to make investments using wholly-owned passive entities whose sole purpose is to make investments in small businesses.

#### **Section 408. Investment in Smaller Enterprises**

This provision would obviate any requirement that SBICs make more than 25 percent of the aggregate dollar amount of its investments in a smaller enterprise if such investments would result in a net cost to the SBIC.

#### **Section 409. Capital Impairment**

This provision will provide SBICs that have received earmarked assets with 6 years following licensing to remedy any condition of capital impairment that does not exceed 85 percent of the total leverage commitment received from the SBA.

#### **Section 410. Tangible Net Worth**

This provision will establish a consistent manner of determining the tangible net worth for both small business concerns and smaller enterprises under the Small Business Investment Act that uses Generally Accepted Accounting Principles and a measurement of total net worth and intangibles.

#### **Section 411. Development of Agency Record**

This provision would require the Associate Administrator for Capital Access to develop and keep a written evidentiary record pertaining to each application for a license by an SBIC. This record would serve as the basis for appeals in the application process.

#### **Section 412. Program Levels**

This provision would authorize the SBA to make \$5 billion each, in purchases of SBIC Participating Securities and debenture leverage for fiscal years 2010 and 2011.

### **Title V – New Markets Venture Capital and Renewable Energy Capital Investment Programs**

#### **Subtitle A – Enhanced New Markets Venture Capital Program**

#### **Section 501. Expansion of New Markets Venture Capital Program**

This section would establish mandatory language in the Small Business Investment Act of 1958 directing the SBA Administrator to actively engage in affirmative actions to expand the number of NMVC companies and increase the number of investments made by current and new NMVC companies. To date, only six NMVC companies are participating in the New Markets program and the SBA's most recent budget allocates no resources to bring more companies into the program.

This section would also require the Administrator to perform a study on their success in expanding the NMVC program and report this progress in expanding the program no later than one year after the enactment of this provision.

### **Section 502. Improved Nationwide Distribution**

This section would direct the SBA Administrator to ensure that there is a uniform geographic distribution of NMVC companies in connection with the agency's efforts to expand the program. In licensing new NMVC companies, this provision would require the Administrator to avoid allocating limited program resources to license new NMVC companies where existing NMVC companies already exist and can meet the demand for small business investment in low income areas. Currently, small business investment is concentrated in only a handful of geographic areas, which are primarily located along the East and West coasts of the U.S.

### **Section 503. Increased Investment In Small Business Concerns Engaged Primarily in Manufacturing**

This section will amend the NMVC program to place an increased focus on small businesses engaged in manufacturing. The program's current limitation to "smaller enterprises" will be expanded to permit investment in small business concerns engaged primarily in manufacturing that are located in Low Income areas. Additionally, the private capital requirements for NMVC companies that investment in small manufacturers are lowered, thus making it easier for these companies to secure final approval from the SBA. It is expected that the SBA will facilitate the licensing of these NMVC companies, particularly in communities that have lost a significant portion of their manufacturing industry

### **Section 504. Expanded Uses for Operational Assistance in Manufacturing**

One crucial advantage that NMVCCs enjoy over other SBA investment programs is the addition of SBA-administered operational assistance grants (OA). The SBA provides matching grant assistance for resources that NMVCCs raise to provide marketing, management, and other operational assistance to the businesses in which it invests. This section will amend the NMVC program to expand the permissible uses of operational assistance to include assistance for small manufacturing businesses in LI areas to retool, update, or replace machinery or equipment.

### **Section 505. Updating Definition of Low-Income Geographic Area**

This section would amend the current definition of “low-income geographic area” by simply referring the definition directly to the definition of a “low-income community” in the Internal Revenue Code. This change would establish parity between the definitions of the eligible NMVC investments and NMTC allocations, thereby bringing these two programs into alignment. This will also help the program operate as it was originally intended and will permit investment firms to use capital raised with New Markets Tax Credit allocations to meet the program’s requirements for matching private capital. Additionally, this approach ensures that the two definitions will remain aligned even in the event that eligibility conditions for tax credit allocations are changed at a future date.

#### **Section 506. Expanding Operational Assistance to Conditionally Approved Companies**

This section will permit New Markets Venture Capital Companies that have received conditional approval from the SBA under Section 354 to receive early grant assistance up to \$50,000 at the point of initial designation. In the event that a conditionally approved NMVC company fails to win final approval, however, the grant must be repaid to the SBA. If the company wins final approval, however, amount of early grant assistance will be deducted from the total amount of operational grant assistance the company receives.

#### **Section 507. Limitation on Time for Final Approval**

This section provides NMVC companies with a two full years to raise private capital and matching funds for operational assistance. Currently, these companies have “up to” two years under current law. This change is intended to remedy the problem that many NMVC companies experienced in reaching final approval. For many NMVC companies, raising the private capital and matching OA funds was the greatest barrier to winning final approval. By extending the timeframe for matching funds to two full years, these companies should have adequate time to raise private capital that is integral to the NMVC program.

#### **Section 508. Streamlined Application For New Markets Venture Capital Program**

This section will require the SBA to develop a set of documents that reduce the cost and burden for New Markets Venture Capital companies applying for final approval under the program. These documents must be created within 60 days after the enactment of the bill.

This section is intended to simplify the application process for new NMVC companies, enabling the SBA to license more companies and expand the program. This section is also intended to operate in conjunction with the expansion and nationwide distribution initiatives established by this legislation.

#### **Section 509. Elimination of Matching Requirement**



This section will eliminate the minimum amount of matching commitments for operational assistance that an NMVC company must raise before receiving final approval. Currently, this minimum is set at not less than 30 percent of the total amount of private capital or binding capital commitments the NMVC company has raised.

The requirement for matching OA commitments has proven to be the greatest barrier to licensing new NMVC companies. The required matching commitments were simply too high for many NMVC companies to meet, particularly given the economic conditions in the communities in which they operate. By eliminating this requirement, this section is intended to enable many more NMVC companies to participate in the program and should streamline the process to winning final approval from the SBA.

### **Section 510. Simplified Formula for Operational Assistance Grants**

This section will revise the amount of operational assistance grants a NMVC company may receive. The new amounts will be equal to either 10 percent of the private resources the company has raised for operational assistance, or \$1 million, whichever is less.

This section is intended to significantly simplify the formula for determining the amount of OA grants a NMVC company may receive, enabling companies to receive their OA allocations more quickly than they currently do and providing these companies with greater certainty as to the amount of OA resources that they will have.

### **Section 511. Authorization of Appropriations and Enhanced Allocation for Small Manufacturing**

This section reauthorizes appropriations in a total amount of \$100 million to fund debenture guarantees and \$20 million for operational assistance grants for fiscal years 2010 and 2011. Additionally, this section requires that at least half of these authorized funds be used for the purpose of entering into participation agreements and providing operational assistance to NMVC companies that invest primarily in small business concerns that are engaged in manufacturing.

## **Subtitle B – Expanded Investment in Small Business Renewable Energy**

### **Section 521. Expanded Investment In Renewable Energy**

This section reconfigures the Renewable Fuels Capital Investment (RFCI) Program in the Small Business Investment Act of 1958 to highlight the program's existing focus on investment in all types of renewable energy, not just renewable fuels.

### **Section 522. Renewable Energy Capital Investment (RECI) Program Made Permanent**

This section will provide standing authority for the SBA to carry out the RECI program as a permanent part of the agency's investment mission.

### **Section 523. Expanded Eligibility for Small Businesses**

This section would eliminate the program's current limitation to "smaller enterprises," and will instead permit investment in all businesses that qualify as small business concerns under the Small Business Act.

### **Section 524. Expanded Uses for Operational Assistance in Manufacturing and Small Businesses**

Like the NMVC program, the RECI program is bolstered by the addition of SBA administered operational assistance grants (OA) that provide matching grant assistance for resources that are provided to assist small businesses that receive investment capital with marketing, management, and other operational assistance. This section will amend the RECI program to expand the permissible uses of operational assistance to include assistance for all small businesses to take steps to reduce their energy consumption and for small manufacturing businesses to retool, update, or replace machinery or equipment.

### **Section 525. Expansion of Renewable Energy Capital Investment Program**

This section would establish mandatory language in the Small Business Investment Act of 1958 directing the SBA Administrator to actively engage in affirmative actions to expand the number of RECI companies. Despite the program's enactment in December of 2007, the Administrator has yet to implement the program and the SBA's most recent budget allocates no resources to facilitate implementation.

This section would also require the Administrator to perform a study on their success in expanding the RECI program and report this progress in expanding the program no later than one year after the enactment of this provision.

### **Section 526. Simplified Fee Structure to Expedite Implementation**

This section will simplify the existing fee structure of the RECI program to authorize the Administrator to charge fees only for the purpose of offsetting the cost of RECI guarantees. Operational assistance grants would continue to be subsidized by appropriated funds. This will effectively expedite the implementation of the RECI program by enabling the SBA to implement the investment and leverage portion of the program independent of the operational grants.

### **Section 527. Increased Operational Assistance Grants**

This provision would double the existing authorization for operational assistance grants in the RECI program from its current level of \$15 million a year to \$30 million for each fiscal year through 2011.

### **Section 528. Authorizations of Appropriations**

This section authorizes appropriations a program level of \$1 billion in debenture guarantees.

## **Title VI – Small Business Health Information Technology Financing Program**

### **Section 601. Amendment of Small Business Act**

Amends the Small Business Act to create a new loan guarantee program for the purchase of health information technology by eligible health care professionals in solo and small group practices.

#### **Subsection (a) Definitions**

Provides that the definition for health information technology (for purposes of the guarantee loan program) will be consistent with the “meaningful EHR use” requirements set forth in the Social Security Act. Loan proceeds shall be used exclusively for Health IT purposes.

Participation in the program is limited to physicians as defined in section 1861(r) of the Social Security Act, practitioner as described in section 1842(b)(18)(C) of that Act (such as MDs, Osteopaths, Dentists, Podiatrists, Optometrists, Chiropractors, Physician Assistants, Nurse Practitioners, Clinical Nurse Specialists, Certified Registered Nurse Anesthetist, Certified Nurse-midwives, Clinical Social Workers, Clinical Psychologists, Registered Dietitian or Nutrition Professionals), and Physical or Occupational Therapists, Speech Language Pathologists, and Audiologists. The practices that are eligible must also be a “small business concern” as defined using the small business size standards.

#### **Subsection (b) Loan Guarantees for Qualified Eligible Professionals**

Establishes a loan guarantee program for eligible professionals, which provides a 90 percent guarantee and loan amounts up to \$350,000 for any single individual/professional and \$2,000,000 for any group.

#### **Subsection (c) Fees**

The fees imposed by the SBA on borrowers shall be no more than 2 percent of the guaranteed portion of the loan. The annual lender servicing fees imposed by SBA are limited to no more than 0.5 percent. Additional fees may not be assessed against the borrower by a lender. These provisions will encourage borrowers and lenders to participate in the program.

#### **Subsection (d) Deferral Period**

Permits a professional who has borrowed through the program to defer payment on his or her loan for at least one year and up to three years. It provides authority for SBA to subsidize the interest costs associated with the deferral.

#### **Subsection (e) Effective Date**

The SBA loan guarantee program may not take effect until the Secretary of HHS has established “meaningful EHR use requirements” as set forth in the Social Security Act.

#### **Subsection (f) Sunset**

SBA may not extend loan guarantees 5 years after the Secretary of HHS has established “meaningful EHR use requirements” as set forth in the Social Security Act.

#### **Subsection (g) Authorization of Appropriation**

Program authorizes \$10 billion in loan authority.

### **Title VII – Small Business Early-Stage Investment Program**

#### **Section 701. Small Business Early Stage Investment Program**

This provision places the SBESIA under Title III of the Small Business Investment Act of 1958.

#### **Section 399A. Establishment of Program**

The program is established as a stand alone program in the Small Business Investment Act of 1958 with the purpose of providing equity investment financing to early stage small businesses in targeted industries.

#### **Section 399B. Administration of Program**

The program is administered by the Investment Division established under Title II of the Small Business Investment Act of 1958.

#### **Section 399C. Applications**

This program is open to all manner of private investment companies, both those organized under relevant State or Federal laws, as well as licensed small business investment companies under Title III of the Small Business Investment Act.

The Administrator must establish an application process to select investment companies to participate in the program. This process should be similar to the process that the agency currently uses to select participants for its other investment programs, and requires:

- (1) a business plan describing how the company intends to make successful venture capital investments in early stage small businesses in targeted industries;
- (2) information regarding the relevant venture capital qualifications and personal background of the managers of the company;
- (3) a description of the extent to which the applicant meets other selection criteria that are also established under this part;

Because SBICs have already submitted an application along these lines, the Administrator may establish an abbreviated application process for licensed SBICs who wish to participate in the SBESIA. To the maximum extent practicable, the abbreviated application process must avoid duplication of information or materials previously submitted in the SBIC licensing process. Additionally, in taking applications from SBICs, the Administrator shall incorporate a presumption that SBICs satisfy selection criteria related to character and fitness under Section 399D(b)(3). SBICs shall also be presumed to satisfy the criteria requiring the fund to focus on investment in early stage small businesses in targeted industries under Section 399D(b)(5).

#### **Section 399D. Selection of Participating Investment Companies**

Within 90 days after receiving an application, the Administrator must make a determination to approve an application for issuance of a grant commitment to the applicant or disapprove the application.

In deciding to approve or disapprove an application, the Administrator should consider selection criteria similar to those specified in the agency's other investing programs, including:

- (1) the likelihood that the company will meet the goals specified in its business plan;
- (2) the likelihood that the investments of the company will create or preserve jobs;
- (3) the character and fitness of the company's management team;
- (4) the previous experience of the company's management team making investments similar to those described in the application;
- (5) the extent to which the company will concentrate its investment activities on early stage small businesses in targeted industries;
- (6) the likelihood that the company will achieve profitability;
- (7) the management team's track record at managing profitable investment vehicles.

#### **Section 399E. Grants**

For those companies selected to participate in the program, the Administrator shall provide grants in amounts of up to \$100 million. In order to receive these grants, however, the company must have raised an amount of private capital equal to or greater than the amount of the SBA grant, thus establishing a minimum 1:1 ratio of SBA grant capital to private capital. The total aggregate amount of all grants the SBA makes to any one participating company cannot exceed \$100 million.

Grant funds can only be drawn-down by the investment company at the same time and in the same proportions as the private capital is paid into the investment fund.

SBA commitments of grant funds remain available to investment companies for a period of five years beginning on the date which the grant commitment is drawn upon.

#### **Section 399F. Investments in Early Stage Small Businesses**

As a condition of receiving an SBA grant, a participating investment company must make all of its investments in small businesses, and at least 50 percent of its investments in early stage small businesses in targeted industries.

#### **Section 399G. Pro Rata Investment Shares**

All investments made by a participating investment company must include a grant funds in an amount that is equal to the overall proportions of grant funds and private capital in the investment fund.

#### **Section 399H. Grant interest**

In exchange for receiving SBESI funds, participating investment funds must convey a “grant interest” to the SBA. The grant interest shall have all the rights and attributes of an investor interest, but shall not denote control or voting rights to the SBA. The grant interest shall entitle the SBA to a pro rata portion of any distributions made by the fund, equal to the overall percentage of capital in the investment company that the grant comprises. The Administrator shall receive distributions from the licensed company at the same times and in the same amounts as other investors in the company. The investment company shall make allocations of income, gain, loss, deduction and credit to the Administrator with respect to the grant interest as if the Administrator were an investor.

The manager’s profits interest shall not exceed twenty percent of the firm’s profits, exclusive of any profits that may accrue as a result of the manager’s individual capital contributions to the investment company. Any excess of this amount, less deemed taxes thereon, shall be returned by the manager and paid to the investors and the SBA in proportion to their capital contributions and grants paid in. No manager’s profits interest shall be paid prior to the payment to the investors and the Administration of all contributed capital and grants made, other than a tax distribution.

Additionally, as a condition of receiving a grant, a participating investment company must make all distributions to all investors in cash and must make distributions within a reasonable time after exiting investments.

#### **Section 399I. Fund**

Ongoing funding for the program will be provided through a separate fund created with the program which shall be available to the Administrator, subject to annual appropriations, as a revolving fund for the purposes of the program. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to the operations of the Administrator under this part shall be paid from the fund.

### **Section 399J. Application of Other Sections**

This provision incorporates SBA oversight and enforcement authority, including authorities to take action in cases of fraud, waste, and abuse by investment companies, its officers and agents, from its existing investment programs into the SBESI program.

### **Section 399J. Definitions**

“Targeted Industries” are predominately involved in researching, developing, manufacturing, producing, or bringing to market goods, products, or services for the agricultural technology, energy technology, environmental technology, life science, information technology, digital media or clean technology sectors.

An “Early Stage Small Business” is a small business concern as defined in section 3 of the Small Business Act that is located in the United States (or its territories), and that has not generated gross annual sales revenues exceeding \$15 million in any of the previous three years.

### **Section 399L. Authorization**

This section will authorize the SBESI program to make a total of \$200 million in grants.

## **Title VIII – Disaster Relief Programs**

### **Section 801. Revised Collateral Requirements**

This provision will revise the collateral requirements so that business owners are not required to pledge their homes for business loans less than \$250,000.

### **Section 802. Increased Limits**

This provision will increase the legislative limit on disaster loans from \$1.5 million to \$3 million for homeowner loans and from \$2 to \$3 million for business loans.

### **Section 803. Revised Repayment Terms**

This provision requires the repayment period to begin no sooner than one year from the date that the final loan disbursement is made and requires that repayment amounts be based solely on funds that have been disbursed.

#### **Section 804. Revised Disbursement Process**

This provision will require that approved funds for SBA disaster loans be disbursed upon a schedule with increased minimum disbursement levels to better meet the needs of disaster victims.

#### **Section 805. Grant Program**

This provision will provide the SBA with authority to offer grants of up to \$100,000 for businesses that have been the most severely affected by a catastrophic disaster for which the Administrator has declared eligibility for additional disaster assistance (pursuant to 7(b)(9) of the Small Business Act). The businesses must have been in existence at least two years prior to the disaster, must be economically viable, that have applied for and been rejected for a conventional disaster assistance loan. Grants would only be available to businesses that reestablish their business within the same or in a contiguous county or parish in which they were originally located.

#### **Section 806. Regional Disaster Working Groups**

This provision shall require the Administrator to establish and carry out a new program whereby the Regional Administrator in each of the SBA's regional offices must develop region-specific disaster preparedness and response plans that are based upon the comprehensive disaster response plan required by §40 of the Small Business Act and that is developed in cooperation with city, state, and federal emergency response authorities as well as with representatives from businesses located within the region. At a minimum, the disaster preparedness and recovery subplan must identify and plan for three disaster scenarios, either natural or manmade, that are likely to occur in the region.

#### **Section 807. Outreach Grants for Loan Applicant Assistance**

This section will direct the Administrator to use funds authorized for administrative expenses in the Disaster Loan program to make grants to Women's Business Centers, Veterans' Business Outreach Centers, Small Business Development Centers, and local chambers of commerce located in an area of a declared disaster for the purpose of providing disaster loan applicants with assistance in preparing applications for disaster assistance.

### **Title IX – Regulations**

#### **Section 901. Regulations**



Pursuant to this section, the SBA must promulgate regulations to carry out the provisions contained in the Act within 180 days following enactment.