

## AUTHORIZING STATUTORY AND REGULATORY PROVISIONS

### INFORMATION COLLECTION #3245-0332 NMVC PROGRAM APPLICATION, FUNDING, AND REPORTING

- **The Small Business Investment Act of 1958, Sections 351-368, codified at 15 USC §§ 689a-q:**

#### PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

##### Sec. 351. DEFINITIONS.

In this part, the following definitions apply:

(1) DEVELOPMENTAL VENTURE CAPITAL.—The term “developmental venture capital” means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term “equity capital” has the same meaning given such term in section 303(g)(4).

(2) LOW-INCOME INDIVIDUAL.—The term “low-income individual” means an individual whose income (adjusted for family size) does not exceed—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(3) LOW-INCOME GEOGRAPHIC AREA.— the term “low-income geographic area” means—

(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

(i) the poverty rate for that census tract is not less than 20 percent;

(ii) in the case of a tract—

(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(B) any area located within—

(i) HUBZone (as defined in section 3(p) of the Small Business Act and the implementing regulations issued under that section);

(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term “New Markets Venture Capital company” means a company that—

(A) has been granted final approval by the Administrator under section 354(e); and

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

(5) OPERATIONAL ASSISTANCE.—The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development.

(6) PARTICIPATION AGREEMENT.—The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 354(e), that—

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

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

(7) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term “specialized small business investment company” means any small business investment company that—

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

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

(C) was licensed under section 301(d), as in effect before September 30, 1996.

(8) STATE.—The term “State” means such of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

#### Sec. 352. PURPOSES

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

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

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

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

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

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

#### Sec. 353. ESTABLISHMENT

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

(1) enter into participation agreements with companies granted final approval under section 354(e) for the purposes set forth in section 352;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 355; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 358.

#### Sec. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

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

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

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

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

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

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;

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

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

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

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;

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

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

(c) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approve companies to participate in the New Markets Venture Capital Program.

(2) SELECTION CRITERIA.—In selecting companies under paragraph (1), the Administrator shall consider the following:

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

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

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

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

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

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

(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

(H) Any other factors deemed appropriate by the Administrator.

(3) NATIONWIDE DISTRIBUTION.—The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

(d) REQUIREMENTS TO BE MET FOR FINAL APPROVAL.—The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

(1) CAPITAL REQUIREMENT.—Each conditionally approved company shall raise not less than \$5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

(A) IN GENERAL.—In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

(B) EXCEPTION.—The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

(C) LIMITATION.—In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

(e) FINAL APPROVAL; DESIGNATION—The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

Sec. 355. DEBENTURES.

(a) IN GENERAL.—The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(b) TERMS AND CONDITIONS.—The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) MAXIMUM GUARANTEE.—

(1) IN GENERAL.—Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

(e) INVESTMENT LIMITATIONS.—

(1) DEFINITION.—In this subsection, the term “covered New Markets Venture Capital company” means a New Markets Venture Capital company—

(A) granted final approval by the Administrator under section 354(e) on or after March 1, 2002;

(B) that has obtained a financing from the Administrator.

(2) LIMITATION.—Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital. [sic]

Sec. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

(a) ISSUANCE.—The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) LIMITATION.—Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT OR DEFAULT.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) SUBROGATION AND OWNERSHIP RIGHTS.—

(1) SUBROGATION.—In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) MANAGEMENT AND ADMINISTRATION.—

(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) CONTRACTING OF FUNCTIONS.—

(A) IN GENERAL.—The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a bookentry or other electronic form of registration for trust certificates issued under this section.

Sec. 357. FEES

Except as provided in section 356(d), the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

Sec. 358. OPERATIONAL ASSISTANCE GRANTS.

(a) IN GENERAL.—

(1) AUTHORITY.—In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) TERMS.—Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) GRANTS TO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

(A) AUTHORITY.—In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) USE OF FUNDS.—The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) SUBMISSION OF PLANS —A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) GRANT AMOUNT.—

(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under with [sic] section 354(d)(2).

(B) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a New Markets Venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Markets Venture Capital companies set forth in section 354(d)(2).

(5) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

Sec. 359. BANK PARTICIPATION.

(a) IN GENERAL.—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) LIMITATION.—No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

Sec. 360. FEDERAL FINANCING BANK.

Section 318 shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

Sec. 361. REPORTING REQUIREMENTS.

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

Sec. 362. EXAMINATIONS.

(a) IN GENERAL.—Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Small Business Administration in accordance with this section.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) COSTS.—

(1) ASSESSMENT.—

(A) IN GENERAL.—The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) PAYMENT.—Any company against which the Administrator assess costs under this paragraph shall pay such costs.

(2) DEPOSIT OF FUNDS.—Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

#### Sec. 363. INJUNCTIONS AND OTHER ORDERS.

(a) IN GENERAL.—Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) JURISDICTION.—In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Markets Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) ADMINISTRATOR AS TRUSTEE OR RECEIVER.—

(1) AUTHORITY.—The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) APPOINTMENT.—Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

#### Sec. 364. ADDITIONAL PENALTIES FOR NONCOMPLIANCE.

(a) IN GENERAL.—With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this Act, of any regulation issued under this Act, or of any participation agreement entered into under this Act, the Administrator may in accordance with this section

—

(1) void the participation agreement between the Administrator and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this Act.

(b) ADJUDICATION OF NONCOMPLIANCE.

(1) IN GENERAL.—Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for the purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) PARTIES AUTHORIZED TO FILE CAUSES OF ACTION.—Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

#### Sec. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF FIDUCIARY DUTY.

(a) PARTIES DEEMED TO COMMIT A VIOLATION.—Whenever any New Markets Venture Capital company violates any provision of this Act, of a regulation issued under this Act, or of a participation agreement entered into under this Act, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such



violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) FIDUCIARY DUTIES.—It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) UNLAWFUL ACTS.—Except with the written consent of the Administrator, it shall be unlawful

—  
(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person to continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust.

#### Sec. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 313 (to the extent that such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

#### Sec. 367. REGULATIONS.

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

#### Sec. 368. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee \$150,000,000 of debentures under this part.

(2) \$30,000,000 to make grants under this part.

(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 362(c)(2) are authorized to be appropriated only for the costs of examinations under section 362 and for the costs of other oversight activities with respect to the program established under this part.

- **13 CFR PART 108—NEW MARKETS VENTURE CAPITAL (“NMVC”) §§108.00-2040**  
**TITLE 13—Business Credit and Assistance**  
**CHAPTER I—SMALL BUSINESS ADMINISTRATION**  
**PART 108—NEW MARKETS VENTURE CAPITAL (“NMVC”) PROGRAM**
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**Subpart A—INTRODUCTION TO PART 108**

<b>§108.10</b>	<b><u>Description of the New Markets Venture Capital Program.</u></b>
<b>§108.20</b>	<b><u>Legal basis and applicability of this part 108.</u></b>
<b>§108.30</b>	<b><u>Amendments to Act and regulations.</u></b>
<b>§108.40</b>	<b><u>How to read this part 108.</u></b>

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**Subpart B—DEFINITION OF TERMS USED IN THIS PART 108**

<b>§108.50</b>	<b><u>Definition of terms.</u></b>
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**Subpart C—QUALIFICATIONS FOR THE NMVC PROGRAM**  
**Organizing a NMVC Company**

<b>§108.100</b>	<b><u>Business form.</u></b>
<b>§108.110</b>	<b><u>Qualified management.</u></b>
<b>§108.120</b>	<b><u>Economic development primary mission.</u></b>
<b>§108.130</b>	<b><u>Identified Low Income Geographic Areas.</u></b>
<b>§108.140</b>	<b><u>SBA approval of initial Management Expenses.</u></b>
<b>§108.150</b>	<b><u>Management and ownership diversity requirement.</u></b>
<b>§108.160</b>	<b><u>Special rules for NMVC Companies formed as limited partnerships.</u></b>

**Capitalizing a NMVC Company**

<b>§108.200</b>	<b><u>Adequate capital for NMVC Companies.</u></b>
<b>§108.210</b>	<b><u>Minimum capital requirements for NMVC Companies.</u></b>
<b>§108.230</b>	<b><u>Private Capital for NMVC Companies.</u></b>

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**Subpart D—APPLICATION AND APPROVAL PROCESS FOR NMVC COMPANY DESIGNATION**

- §108.310            Contents of application.
- §108.320            Contents of comprehensive business plan.
- §108.330            Grant issuance fee.
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**Subpart E—EVALUATION AND SELECTION OF NMVC COMPANIES**

- §108.340            Evaluation and selection—general.
- §108.350            Eligibility and completeness.
- §108.360            Evaluation criteria.
- §108.370            Conditional approval.
- §108.380            Final approval as a NMVC Company.
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**Subpart F—CHANGES IN OWNERSHIP, STRUCTURE, OR CONTROL**

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- §108.400            Changes in ownership of 10 percent or more of NMVC Company but no change of Control.
- §108.410            Changes in Control of NMVC Company (through change in ownership or otherwise).
- §108.420            Prohibition on exercise of ownership or Control rights in NMVC Company before SBA approval.
- §108.430            Notification to SBA of transactions that may change ownership or Control.
- §108.440            Standards governing prior SBA approval for a proposed transfer of Control.
- §108.450            Notification to SBA of pledge of NMVC Company's shares.

**Restrictions on Common Control or Ownership of Two or More NMVC Companies**

- §108.460            Restrictions on Common Control or ownership of two (or more) NMVC Companies.

**Change in Structure of NMVC Company**

- §108.470            SBA approval of merger, consolidation, or

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**Subpart G—MANAGING THE OPERATIONS OF A NMVC COMPANY**

**General Requirements**

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- §108.502            Representations to the public.
- §108.503            NMVC Company's adoption of an approved valuation policy.
- §108.504            Equipment and office requirements.
- §108.506            Safeguarding the NMVC Company's assets/Internal controls.
- §108.507            Violations based on false filings and nonperformance of agreements with SBA.
- §108.509            Employment of SBA officials.

**Management and Compensation**

- §108.510            SBA approval of NMVC Company's Investment Adviser/Manager.
- §108.520            Management Expenses of a NMVC Company.

**Cash Management by a NMVC Company**

- §108.530            Restrictions on investments of idle funds by NMVC Companies.

**Borrowing by NMVC Companies From Non-SBA Sources**

- §108.550            Prior approval of secured third-party debt of NMVC companies.

**Voluntary Decrease in Regulatory Capital**

- §108.585            Voluntary decrease in NMVC Company's Regulatory Capital.

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**Subpart H—RECORDKEEPING, REPORTING, AND EXAMINATION REQUIREMENTS FOR NMVC COMPANIES**

**Recordkeeping Requirements for NMVC Companies**

- §108.600**            General requirement for NMVC Company to maintain and preserve records.
- §108.610**            Required certifications for Loans and Investments.
- §108.620**            Requirements to obtain information from Portfolio Concerns.

**Reporting Requirements for NMVC Companies**

- §108.630**            Requirement for NMVC companies to file financial statements and supplementary information with SBA (SBA Form 468).
- §108.640**            Requirement to file portfolio financing reports (SBA Form 1031).
- §108.650**            Requirement to report portfolio valuations to SBA.
- §108.660**            Other items required to be filed by NMVC Company with SBA.
- §108.680**            Reporting changes in NMVC Company not subject to prior SBA approval.

**Examinations of NMVC Companies by SBA for Regulatory Compliance**

- §108.690**            Examinations.
- §108.691**            Responsibilities of NMVC Company during examination.
- §108.692**            Examination fees.

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**Subpart I—FINANCING OF SMALL BUSINESSES BY NMVC COMPANIES**  
**Determining the Eligibility of a Small Business for NMVC Financing**

- §108.700**            Compliance with size standards in part 121 of this chapter as a condition of Assistance.
- §108.710**            Requirement to finance Low-Income Enterprises.
- §108.720**            Small Businesses that may be ineligible for financing.
- §108.730**            Financings which constitute conflicts of interest.
- §108.740**            Portfolio diversification (“overline” limitation).
- §108.760**            How a change in size or activity of a Portfolio Concern affects the NMVC Company and the

### ***Structuring NMVC Company's Financing of Eligible Small Businesses***

- §108.800**            **Financings in the form of equity interests.**
- §108.820**            **Financings in the form of guarantees.**
- §108.825**            **Purchasing securities from an underwriter or other third party.**

### ***Limitations on Disposition of Assets***

- §108.885**            **Disposition of assets to NMVC Company's Associates.**

### ***Management Services and Fees***

- §108.900**            **Fees for management services provided to a Small Business by a NMVC Company or its Associate.**

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## ***Subpart J—SBA FINANCIAL ASSISTANCE FOR NMVC COMPANIES (LEVERAGE)***

### ***General Information About Obtaining Leverage***

- §108.1100**            **Type of Leverage and application procedures.**
- §108.1120**            **General eligibility requirement for Leverage.**
- §108.1130**            **Leverage fees payable by NMVC Company.**
- §108.1140**            **NMVC Company's acceptance of SBA remedies under §108.1810.**

### ***Maximum Amount of Leverage for Which a NMVC Company Is Eligible***

- §108.1150**            **Maximum amount of Leverage for a NMVC Company.**

### ***Conditional Commitments by SBA To Reserve Leverage for a NMVC Company***

- §108.1200**            **SBA's Leverage commitment to a NMVC Company—application procedure, amount, and term.**
- §108.1220**            **Requirement for NMVC Company to file financial statements at the time of request for a draw.**
- §108.1230**            **Draw-downs by NMVC Company under SBA's Leverage commitment.**
- §108.1240**            **Funding of NMVC Company's draw request through sale to third-party.**

### ***Funding Leverage by use of SBA Guaranteed Trust Certificates (“TCs”)***

- §108.1600**            **SBA authority to issue and guarantee Trust Certificates.**
- §108.1610**            **Effect of prepayment or early redemption of Leverage on a Trust Certificate.**
- §108.1620**            **Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.**
- §108.1630**            **SBA regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.**
- §108.1640**            **SBA access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.**

**Miscellaneous**

- §108.1700**            **Transfer by SBA of its interest in a NMVC Company's Leverage security.**
- §108.1710**            **SBA authority to collect or compromise its claims.**
- §108.1720**            **Characteristics of SBA's guarantee.**

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**Subpart K—NMVC COMPANY'S NONCOMPLIANCE WITH TERMS OF LEVERAGE**

- §108.1810**            **Events of default and SBA's remedies for NMVC Company's noncompliance with terms of Debentures.**

**Computation of NMVC Company's Capital Impairment**

- §108.1830**            **NMVC Company's Capital Impairment definition and general requirements.**
- §108.1840**            **Computation of NMVC Company's Capital Impairment Percentage.**

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**Subpart L—ENDING OPERATIONS AS A NMVC COMPANY**

- §108.1900**            **Termination of participation as a NMVC Company.**

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**Subpart M—MISCELLANEOUS**

- §108.1910**            **Non-waiver of SBA's rights or terms of Leverage security.**
- §108.1920**            **NMVC Company's application for exemption from a**

§108.1930 Effect of changes in this part 108 on transactions previously consummated.

§108.1940 Procedures for designation of additional Low-Income Geographic Areas

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**Subpart N—REQUIREMENTS AND PROCEDURES FOR OPERATIONAL ASSISTANCE GRANTS TO NMVC COMPANIES AND SSBICS**

§108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

§108.2001 When and how SSBICs may apply for Operational Assistance grants.

§108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.

§108.2003 Grant issuance fee for SSBICs.

§108.2004 Contents of application submitted by SSBICs.

§108.2005 Contents of plan submitted by SSBICs.

§108.2006 Evaluation and selection of SSBICs.

§108.2007 Grant award to SSBICs.

§108.2010 Restrictions on use of Operational Assistance grant funds.

§108.2020 Amount of Operational Assistance grant.

§108.2030 Matching requirements.

§108.2040 Reporting and recordkeeping requirements.