

SMALL BUSINESS INVESTMENT ACT OF 1958

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company)<sup>232</sup>; and

(D)<sup>233</sup> the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c)<sup>234</sup> is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3)<sup>235</sup> APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c)<sup>236</sup> LOSS RESERVE.—

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<sup>232</sup> Parenthetical added by § 3(b) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

<sup>233</sup> Subparagraph 508(b)(2)(D) added by § 223(a)(2)(A)(iv) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

<sup>234</sup> Reference to subsection (c) changed from “(c)(2)” by § 3(c)(1) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

<sup>235</sup> Paragraph 508(b)(3) added by § 223(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

<sup>236</sup> Subsection 508(c) rewritten by § 223(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605). Text of former subsection 508(c) is reprinted below:

LOSS RESERVE.—

(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financings approved pursuant to this section.

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(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) AMOUNT.—The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

(3) ASSETS.—Each loss reserve established under paragraph (1) shall be comprised of—

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(2) AMOUNT.—The amount of the loss reserve shall be based upon the greater of—

(A) the historic loss rate on debentures issued by such company; or

(B) 10 percent of the amount of the company's exposure as determined under subsection (b)(2)(C).

(3) ASSETS.—The loss reserve shall be comprised of segregated assets of the company which shall be securitized in favor of the Administration.

(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent not later than 1 year after a debenture is closed.

(C) 25 percent not later than 2 years after a debenture is closed.

Subsection 3(d) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652) provides:

(d) STUDY AND REPORT.—

(1) IN GENERAL.—The Administrator shall enter into a contract with a Federal agency experienced in community development lending and financial regulation or with a member of the Federal Financial Institutions Examinations Council to study and prepare a report regarding—

(A) the extent to which statutory requirements have caused overcapitalization in the loss reserves maintained by certified development companies participating in the Premier Certified Lenders Program established under section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e); and

(B) alternatives for establishing and maintaining loss reserves that are sufficient to protect the Federal Government from the risk of loss associated with loans guaranteed under such Program.

(2) TRANSMISSION OF REPORT.—The report described in paragraph (1) shall be transmitted to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than 90 days after the enactment of this Act.

(3) LIMITATION.—The amount of the contract described in paragraph (1) shall not exceed \$75,000.

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(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) **CONTRIBUTIONS.**—The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(5) **REPLENISHMENT.**—If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's<sup>237</sup> share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) **DISBURSEMENTS.**—

(A) **IN GENERAL.**—The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B)<sup>238</sup> **TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.**—Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any

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<sup>237</sup> The phrase “10 percent” deleted by § 3(c)(2) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

<sup>238</sup> New subparagraph 508(c)(6)(B) added by § 2(2) of P.L. 108-232, approved May 28, 2004 (118 Stat. 649).

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debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7)<sup>239</sup> ALTERNATIVE LOSS RESERVE.—

Alternative  
loss reserve.

(A) ELECTION.—With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

(B) CONTRIBUTIONS.—

(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

(ii) BASED ON LOSS.—A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

(I) not less than \$100,000; and

(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

(iii) CERTIFICATION.—Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

(C) DISBURSEMENTS.—

(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

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<sup>239</sup> New paragraphs 508(c)(7) and (8) added by § 3(a) of P.L. 108-232, approved May 28, 2004 (118 Stat. 649).