

104TH CONGRESS
1ST SESSION

H. R. 2806

To amend the Small Business Investment Act of 1958 to create the Venture Capital Marketing Association, to transfer certain functions of the Small Business Administration to the Association, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18 (legislative day, DECEMBER 15), 1995

Mr. TORKILDSEN introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committees on Commerce and Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Small Business Investment Act of 1958 to create the Venture Capital Marketing Association, to transfer certain functions of the Small Business Administration to the Association, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Venture Capital Mar-
5 keting Association Charter Act”.

1 **SEC. 2. AMENDMENT TO TABLE OF CONTENTS; CONFORM-**
 2 **ING AMENDMENT.**

3 (a) AMENDMENT TO TABLE OF CONTENTS.—The
 4 table of contents contained in section 101 of the Small
 5 Business Investment Act of 1958 (15 U.S.C. 661 note)
 6 is amended by inserting after the item relating to section
 7 322 the following:

“PART B—VENTURE CAPITAL MARKETING ASSOCIATION

- “Sec. 351. Purposes.
- “Sec. 352. Venture Capital Marketing Association.
- “Sec. 353. Common and preferred stock.
- “Sec. 354. Obligations and securities.
- “Sec. 355. Legal investments and exempt securities.
- “Sec. 356. Loan and investment operations.
- “Sec. 357. Servicing guaranteed securities and assets in liquidation.
- “Sec. 358. Qualification of small business investment companies.
- “Sec. 359. Operations of small business investment companies.
- “Sec. 360. Leverage formula.
- “Sec. 361. Audits of the Corporation.
- “Sec. 362. Regulation of financial safety and soundness.
- “Sec. 363. Government oversight and reports.
- “Sec. 364. Books and records.”.

8 (b) CONFORMING AMENDMENT.—The Small Busi-
 9 ness Investment Act of 1958 (15 U.S.C. 661 et seq.) is
 10 amended by inserting before section 301 the following:

11 **“PART A—GENERAL PROVISIONS”.**

12 **SEC. 3. VENTURE CAPITAL MARKETING ASSOCIATION.**

13 Title III of the Small Business Investment Act of
 14 1958 (15 U.S.C. 681–687m) is amended by adding at the
 15 end the following:

1 keting Association (hereinafter in this part referred to as
2 the ‘Corporation’). The Corporation shall have succession
3 until dissolved. The Corporation shall establish and main-
4 tain its principal office in the Washington, D.C., metro-
5 politan area and shall be deemed, for purposes of venue
6 and jurisdiction in civil actions, to be a resident and citi-
7 zen of the jurisdiction of which it establishes its principal
8 office. Offices may be established by the Corporation in
9 such other place or places as it may deem necessary or
10 appropriate for the conduct of its business.

11 “(b) TAX STATUS.—The Corporation, including its
12 franchise, capital, reserves, surplus, mortgages, and other
13 security holdings and income, shall be exempt from all tax-
14 ation now or hereafter imposed by any State, or by any
15 county, municipality, or local taxing authority, except that
16 any real property of the Corporation shall be subject to
17 State, county, municipal, or local taxation to the same ex-
18 tent according to its value as other real property is taxed.

19 “(c) INTERIM BOARD OF DIRECTORS.—Not later
20 than 60 days after the effective date of this part, the
21 President shall appoint an interim Board of Directors of
22 the Corporation, one of whom the President shall des-
23 ignate as the interim Chairman. The interim Board shall
24 consist of 5 members, one of whom shall be a representa-
25 tive of small business, 3 of whom shall be representatives

1 of small business investment companies, and one of whom
2 shall be a representative of the Administration. The in-
3 terim Board shall arrange for an initial offering of voting
4 common stock solely to small business investment compa-
5 nies and take whatever other actions are necessary to pro-
6 ceed with the operations of the Corporation.

7 “(d) PERMANENT BOARD OF DIRECTORS.—The Cor-
8 poration shall have a permanent Board of Directors which
9 shall consist of 15 members. When small business invest-
10 ment companies have purchased and fully paid for
11 \$20,000,000 of common stock of the Corporation, the
12 Board shall be constituted as follows:

13 “(1) The holders of common stock shall elect 10
14 members to the Board of Directors.

15 “(2) The President shall appoint, with the ad-
16 vice and consent of the Senate, the remaining 5 di-
17 rectors within 60 days of the stock purchase speci-
18 fied in this subsection.

19 “(e) TRANSITION.—Upon the election of the 10 mem-
20 bers of the Board of Directors by the holders of common
21 stock of the Corporation, the interim Board shall turn over
22 the affairs of the Corporation to the permanent Board of
23 Directors, but the members of the interim Board shall
24 continue to serve in an interim capacity as the Presidential
25 appointees to the permanent Board until such time as the

1 permanent Presidential appointees are confirmed by the
2 Senate.

3 “(f) TERMS.—(1) The members of the Board of Di-
4 rectors elected by the common shareholders shall be elect-
5 ed for a term ending on the date of the next annual meet-
6 ing of the common shareholders of the Corporation, and
7 shall serve until their successors have been elected and
8 have qualified. Any vacancy which occurs after the annual
9 election of the members shall be filled by the Board, but
10 only for the unexpired portion of the term.

11 “(2) The members of the Board of Directors ap-
12 pointed by the President shall serve until their successors
13 have been appointed and have qualified. The terms of such
14 members shall be staggered as follows: one member shall
15 serve an initial term of one year, one member shall serve
16 an initial term of 2 years, one member shall serve an ini-
17 tial term of 3 years, one member shall serve an initial term
18 of 4 years, and one member shall serve an initial term
19 of 5 years. All subsequent appointments shall be for a
20 term of 5 years, except that any vacancy shall be filled
21 for the unexpired term of the vacancy. Such members shall
22 be removed only for cause. Of the Presidential appointees,
23 at least 2 members shall be representatives of small busi-
24 ness.

1 “(g) OPERATIONS; EXECUTIVE OFFICERS.—The
2 Board shall determine the general policies which will gov-
3 ern the operations of the Corporation. The Board shall
4 select, appoint, and compensate qualified persons to fill
5 such offices as may be provided for in the bylaws, with
6 such executive functions, powers, and duties as may be
7 prescribed by the bylaws or by the Board of Directors,
8 and such persons shall be the executive officers of the Cor-
9 poration and shall discharge all such executive functions,
10 powers, and duties.

11 “(h) GENERAL POWERS.—The Corporation shall
12 have the power—

13 “(1) to sue and be sued, complain and defend,
14 in its corporate name and through its own counsel;

15 “(2) to adopt, alter, and use a corporate seal,
16 which shall be judicially noticed;

17 “(3) to adopt, amend, and repeal by its Board
18 of Directors, such bylaws, rules, and regulations as
19 may be necessary for the conduct of its business;

20 “(4) to conduct its business, carry out its oper-
21 ations, and have officers and exercise the powers
22 granted by this section in any State without regard
23 to any qualification, licensing, or similar law in any
24 State;

1 “(5) to lease, purchase, or otherwise acquire,
2 own, hold, improve, use, or otherwise deal in and
3 with any property, real, personal, or mixed, or any
4 interest therein, wherever situated;

5 “(6) to accept gifts or donations of services, or
6 of property, real, personal, or mixed, tangible or in-
7 tangible, in aid of any of the purposes of the Cor-
8 poration;

9 “(7) to sell, convey, mortgage, pledge, lease, ex-
10 change, and otherwise dispose of its property and as-
11 sets;

12 “(8) to appoint such attorneys, officers, employ-
13 ees, and agents as may be required, determine their
14 qualifications, define their duties, fix their com-
15 pensation, require bonds for them and fix the pen-
16 alty thereof; and

17 “(9) to enter into contracts, to execute instru-
18 ments, to incur liabilities, and to do all things as are
19 necessary or incidental to the proper management of
20 its affairs and the proper conduct of its business.

21 “(i) NOTICE.—When the permanent Board of Direc-
22 tors is duly constituted and the Corporation is ready to
23 conduct business, it shall so notify the Administration and
24 the Secretary of the Treasury.

1 **“SEC. 353. COMMON AND PREFERRED STOCK.**

2 “(a) VOTING COMMON STOCK.—(1) The Corporation
3 shall have voting common stock with such par value as
4 may be fixed by its Board of Directors from time to time.
5 Each share of voting common stock shall be vested with
6 all voting rights, each share being entitled to one vote with
7 rights of cumulative voting at all elections of directors.

8 “(2) The initial number of shares of voting common
9 stock that the Corporation may issue and have outstand-
10 ing shall be established by the interim Board of Directors.
11 The number of shares of voting common stock may be in-
12 creased or decreased by the affirmative vote of the holders
13 of at least a majority of the total outstanding shares.

14 “(3) The holders of the voting common stock shall
15 not have preemptive rights.

16 “(4) Such dividends as may be declared by the Board
17 of Directors in its discretion shall be paid by the Corpora-
18 tion to the holders of its voting common stock.

19 “(5) In order to accumulate funds for its capital sur-
20 plus account from small business investment companies—

21 “(A) the Corporation shall require each small
22 business investment company to make payments of
23 nonrefundable capital contributions to the Corpora-
24 tion equal to 1 percent of the private capital of each
25 such company;

1 “(B) the Corporation may require each small
2 business investment company to make payments of
3 nonrefundable capital contributions to the Corpora-
4 tion not to exceed 1 percent of any increases in the
5 private capital of such company;

6 “(C) the Corporation also may require each
7 small business investment company which issues a
8 small business investment security to the Corpora-
9 tion to make, or commit to make, a nonrefundable
10 capital contribution to the Corporation not to exceed
11 1 percent of the unpaid principal balance or
12 unredeemed original issue amount of such security;

13 “(D) the Corporation, from time to time, shall
14 issue to each small business investment company
15 voting common stock evidencing any capital con-
16 tributions made pursuant to this subsection;

17 “(E) such voting common stock shall be re-
18 tained by such companies in accordance with such
19 rules as may be established by the Corporation: *Pro-*
20 *vided*, That subject to any stock retention require-
21 ments established by the Corporation, such voting
22 common stock may be transferred to another small
23 business investment company, and such transferred
24 stock may be used to meet the capital contribution
25 requirements of paragraph (4) of this subsection:

1 *Provided further*, That subject to any stock retention
2 requirements established by the Corporation, such
3 voting common stock may be freely transferred if
4 there is a bona fide public market for such stock on
5 a nationally recognized stock exchange.

6 “(6) In order to accumulate additional funds for its
7 capital surplus account—

8 “(A) subject to approval by a majority of the
9 voting shareholders and approval by a majority of
10 the Board of Directors, including not less than a
11 majority of the members appointed by the President
12 and confirmed by the Senate, the Corporation may
13 obtain nonrefundable capital contributions to the
14 Corporation by issuing voting common stock to pri-
15 vate investors other than small business investment
16 companies;

17 “(B) the Corporation, from time to time, shall
18 issue to such investors voting common stock evidenc-
19 ing any capital contributions made pursuant to this
20 subsection;

21 “(C) such voting common stock shall be re-
22 tained by such investors in accordance with such
23 rules as may be established by the Corporation: *Pro-*
24 *vided*, That subject to any stock retention require-
25 ments established by the Corporation, such voting

1 common stock may be freely transferred if there is
2 a bona fide public market for such stock on a na-
3 tionally recognized stock exchange.

4 “(b) NONVOTING COMMON STOCK.—(1) The voting
5 shareholders of the Corporation also may authorize the is-
6 suance of nonvoting common stock having such par value
7 as may be fixed by its Board of Directors from time to
8 time.

9 “(2) The maximum number of shares of nonvoting
10 common stock may be established and increased or de-
11 creased by the affirmative vote of the holders of at least
12 a majority of the total outstanding voting shares.

13 “(3) The holders of the nonvoting common stock shall
14 not have preemptive rights.

15 “(4) Such dividends as may be declared by the Board
16 of Directors in its discretion shall be paid by the Corpora-
17 tion to the holders of its nonvoting common stock.

18 “(5) Any nonvoting common share issued shall be
19 fully transferable, except that, as to the Corporation, it
20 shall be transferable only on the books of the Corporation.

21 “(c) NONVOTING PREFERRED STOCK.—(1) The vot-
22 ing shareholders of the Corporation also may authorize the
23 issuance of nonvoting preferred stock, having such par
24 value as may be fixed by its Board of Directors from time
25 to time.

1 “(2) The maximum number of shares of preferred
2 stock may be established and increased or decreased by
3 the affirmative vote of the holders of at least a majority
4 of the total outstanding voting shares.

5 “(3) The holders of the preferred shares shall be enti-
6 tled to such rate of dividends and such shares shall be
7 subject to such redemption or other conversion provisions
8 as may be provided for at the time of issuance. No divi-
9 dends shall be payable on any share of common stock at
10 any time when any dividend is due on any share of pre-
11 ferred stock and has not been paid. The voting sharehold-
12 ers of the Corporation may prescribe that any class of pre-
13 ferred stock of the Corporation may be converted into vot-
14 ing or nonvoting common stock of the Corporation.

15 “(4) Any preferred share issued shall be freely trans-
16 ferable, except that, as to the Corporation, it shall be
17 transferable only on the books of the Corporation.

18 “(5) In the event of any liquidation, dissolution, or
19 winding up of the Corporation’s business, the holders of
20 any outstanding preferred shares shall be paid in full at
21 par value thereof, plus all accrued dividends, before the
22 holders of the common shares receive any payment.

23 “(d) DEPOSITORY INSTITUTIONS.—Notwithstanding
24 any other provision of law, any depository institution, as
25 defined in section 19(b)(1)(A) of the Federal Reserve Act

1 (12 U.S.C. 461(b)(1)(A)), shall be authorized to make
2 payments to the Corporation of the capital contributions
3 referred to in this section, to receive stock of the Corpora-
4 tion evidencing such capital contributions, and to dispose
5 of such stock, subject to the provisions of this title.

6 **“SEC. 354. OBLIGATIONS AND SECURITIES.**

7 “(a) ISSUANCE OF OBLIGATIONS.—The Corporation
8 is authorized to issue and have outstanding obligations
9 having such maturities and bearing such rate or rates of
10 interest as may be determined by a majority vote of the
11 Board of Directors. Such obligations shall be issued at
12 such times, bear interest at such rates, and contain such
13 terms and conditions as the Corporation shall determine,
14 with the approval of the Secretary of the Treasury. Such
15 obligations may be redeemable at the option of the Cor-
16 poration before maturity in such manner as may be stipu-
17 lated therein. The Corporation shall insert appropriate
18 language in each of its obligations issued under this sec-
19 tion and under section 356 clearly indicating that such
20 obligations, together with the interest thereon, are not
21 guaranteed by the United States and do not constitute a
22 debt or obligation of the United States or any agency or
23 instrumentality thereof other than the Corporation. The
24 Corporation is authorized to purchase in the open market
25 any of its obligations outstanding under this subsection

1 at any time and at any price. Any obligation or security
2 of the Corporation may be issued and sold in definitive
3 form, in book entry form or in such other form, with or
4 without delivery of physical evidence or ownership, as shall
5 be prescribed by the Corporation.

6 “(b) ISSUANCE OF SUBORDINATED OBLIGATIONS.—
7 For the purposes of this section, the Corporation is au-
8 thorized to issue obligations which are subordinated to any
9 or all other obligations of the Corporation, including sub-
10 sequent obligations. Any of such obligations may be con-
11 vertible into shares of common stock in such manner, at
12 such price or prices, and such time or times as may be
13 stipulated therein.

14 “(c) PURCHASE AND SALE OF OBLIGATIONS BY SEC-
15 RETARY OF THE TREASURY.—(1) The Secretary of the
16 Treasury, in the Secretary’s discretion, may purchase any
17 obligation issued by the Corporation pursuant to sub-
18 section (a) of this section as now or hereafter in force and
19 for such purpose of the Secretary of the Treasury is au-
20 thorized to use as a public debt transaction the proceeds
21 of the sale of any securities hereafter issued under chapter
22 31 of title 31, United States Code, as now or hereafter
23 in force, and the purposes for which securities may be is-
24 sued under chapter 31 of title 31, United States Code,
25 as now or hereafter in force, are extended to include such

1 purchases. The authorities provided to the Secretary of
2 the Treasury by the preceding sentence shall be available
3 only to such extent and in such amounts as are provided
4 in advance in appropriations Acts. The Secretary of the
5 Treasury shall not at any time purchase any obligations
6 under this subsection if such purchase would increase the
7 aggregate principal amount of the Secretary's then out-
8 standing holdings of such obligations under this sub-
9 section to an amount greater than \$1,000,000,000. Any
10 purchase of obligations by the Secretary of the Treasury
11 under this subsection shall be made solely to prevent or
12 to enable the Corporation to correct an inability of the
13 Corporation to pay amounts required to be paid on ac-
14 count of obligations or securities issued or guaranteed by
15 the Corporation. Any purchase of obligations by the Sec-
16 retary of the Treasury under this subsection shall be on
17 such terms and conditions as shall be determined by the
18 Secretary of the Treasury. Each such purchase of obliga-
19 tions by the Secretary of the Treasury under this sub-
20 section shall take into consideration the current average
21 rate on outstanding marketable obligations of the United
22 States of comparable maturities as of the last day of the
23 month preceding the making of such purchase.

24 “(2) The Secretary of the Treasury may, at any time,
25 sell on such terms and conditions and at such price or

1 prices as the Secretary may determine any of the obliga-
2 tions acquired by the Secretary under this section. All re-
3 demptions, purchases, and sales by the Secretary of the
4 Treasury of such obligations under this section shall be
5 treated as public debt transactions of the United States.

6 **“SEC. 355. LEGAL INVESTMENTS AND EXEMPT SECURITIES.**

7 “(a) **LAWFUL INVESTMENTS.**—All obligations issued
8 by the Corporation pursuant to sections 354 and 356, all
9 nonvoting common stock issued by the Corporation pursu-
10 ant to section 353(b), all preferred stock issued by the
11 Corporation pursuant to section 353(c), and all obligations
12 guaranteed by the Corporation pursuant to section 356
13 shall be lawful investments, and may be acceptable as se-
14 curity for all fiduciary, trust, and public funds, the invest-
15 ment or deposit of which shall be under authority or con-
16 trol of the United States or of any officer or officers there-
17 of.

18 “(b) **TREATMENT OF CORPORATION UNDER FED-**
19 **ERAL RESERVE ACT.**—The Corporation shall, for the pur-
20 poses of section 14(b)(2) of the Federal Reserve Act (12
21 U.S.C. 355(b)(2)), be deemed to be an agency of the Unit-
22 ed States.

23 “(c) **TREATMENT OF OBLIGATIONS UNDER TITLE**
24 **31.**—The obligations of the Corporation shall be deemed

1 to be obligations of the United States for purposes of sec-
2 tion 3124 of title 31, United States Code.

3 “(d) TREATMENT OF CORPORATION UNDER TITLE
4 11.—For the purpose of section 101(27) of title 11, Unit-
5 ed States Code, the Corporation shall be deemed to be an
6 agency of the United States; however, for the purpose of
7 section 101(41) of title 11, United States Code, the Cor-
8 poration shall not be deemed to be a governmental unit,
9 but instead shall be deemed to be a corporation.

10 **“SEC. 356. LOAN AND INVESTMENT OPERATIONS.**

11 “(a) SMALL BUSINESS INVESTMENT SECURITIES.—
12 After the permanent Board of Directors has been duly
13 constituted, the Corporation is authorized, subject to the
14 provisions of this section, pursuant to commitments or
15 otherwise, to make advances on the security of, purchase
16 or repurchase, service, sell or resell, offer participations
17 or pooled interests in, act as an issuer or guarantor of,
18 or otherwise deal in, at prices and on terms and conditions
19 determined by the Corporation, small business investment
20 securities.

21 “(b) REQUIREMENTS.—The Corporation is author-
22 ized to issue and guarantee securities based on the small
23 business investment securities specified under subsection
24 (a) of this section. Securities issued or guaranteed by the
25 Corporation pursuant to this subsection may be in the

1 form of debt obligations secured by pools of small business
2 investment securities, trust certificates of beneficial own-
3 ership in such pools of small business investment securi-
4 ties, or equity securities based on such small business in-
5 vestment securities or any combination thereof. Small
6 business investment securities set aside pursuant to the
7 issuance or guarantee of such debt obligations, trust cer-
8 tificates, or equity securities shall at all times provide for
9 payments that, in the reasonable judgment of the Corpora-
10 tion, are adequate to ensure payment of the obligations
11 on such securities.

12 “(c) PERFECTION OF SECURITY INTERESTS.—Not-
13 withstanding the provisions of any State law to the con-
14 trary, including the Uniform Commercial Code as in effect
15 in any State, a security or ownership interest in small
16 business investment securities created by the Corporation
17 or by any eligible small business investment company may
18 be perfected either through the taking of possession of
19 such securities or by the filing of notice of such interest
20 in such securities in the manner provided by such State
21 law for perfection of security or ownership interests in ac-
22 counts.

1 **“SEC. 357. SERVICING GUARANTEED SECURITIES AND AS-**
2 **SETS IN LIQUIDATION.**

3 “(a) IN GENERAL.—To carry out the purposes set
4 forth in section 351, and notwithstanding any law, rule,
5 or regulation, the Administration is authorized and di-
6 rected to enter into a contract with the Corporation under
7 which the Corporation will manage and service all small
8 business investment company securities and commitments
9 outstanding on the effective date of this part and all assets
10 in default or in liquidation status held by the Administra-
11 tion on such effective date, or managed by any third party
12 on the Administration’s behalf, as the result of default or
13 liquidation proceedings by the Administration involving
14 small business investment companies. Such outstanding
15 small business investment company securities shall in-
16 clude, but are not limited to, all debentures and participat-
17 ing securities guaranteed or owned by the Administration
18 and all preferred stock issued to the Administration.

19 “(b) DEADLINE.—The Administration and the Cor-
20 poration shall enter into a contract under subsection (a)
21 no later than 30 days following the appointment of the
22 interim Board of Directors under section 352(c).

23 “(c) TERMS AND CONDITIONS.—The contract under
24 subsection (a) shall provide for the following:

25 “(1) All such outstanding securities, commit-
26 ments, and assets, together with all of the docu-

1 mentation, files, and books and records pertaining
2 thereto, shall be transferred from the Administration
3 to the Corporation which shall act solely as the man-
4 aging and servicing agent on behalf of the Adminis-
5 tration for all such securities, commitments, and as-
6 sets.

7 “(2) All of the obligations for which the Admin-
8 istration is responsible on all securities which are
9 transferred to the Corporation for management and
10 servicing shall remain in full force and effect as obli-
11 gations of the Administration, including, but not
12 limited to, guarantees of or commitments to deben-
13 tures or participating securities, or guarantees of
14 certificates of interest, or contracts for the purchase
15 of debentures or preferred stock.

16 “(3) Except as provided in paragraph (6), all of
17 the benefits to which the Administration is entitled
18 on all securities which are transferred to the Cor-
19 poration for management and servicing shall remain
20 in full force and effect, including, but not limited to,
21 payments of principal and interest of debentures,
22 payments of priority payments and profit participa-
23 tions on, and redemptions of, participating securi-
24 ties, and payments of dividends and redemptions on
25 preferred stock.

1 “(4) For purposes of managing and servicing
2 all such securities, commitments, and assets the Cor-
3 poration shall be considered the successor entity to
4 the Administration under all trust agreements, con-
5 tracts, and any other agreements relating to such se-
6 curities, commitments, and assets.

7 “(5) All payments received by the Corporation
8 on the outstanding portfolio transferred to the Cor-
9 poration and all receipts from the liquidation of as-
10 sets transferred to the Corporation, net of manage-
11 ment and servicing fees, shall be immediately paid to
12 the Administration.

13 “(6) Notwithstanding section 4(c)(5) of the
14 Small Business Act (15 U.S.C. 633(c)(5)), the fol-
15 lowing fees shall be paid to the Corporation for man-
16 aging and servicing the transferred securities, com-
17 mitments, and assets:

18 “(A) On the portfolio of outstanding secu-
19 rities and commitments, a fee equal to 2 per-
20 cent per fiscal year of the aggregate balance
21 outstanding on the effective date of this part,
22 and 2 percent per fiscal year of the remaining
23 aggregate balance outstanding at the beginning
24 of each fiscal year thereafter. This fee shall be
25 paid in advance upon determination of the ag-

1 aggregate balance outstanding at the beginning of
2 each period.

3 “(B) On the portfolio of assets in default
4 or in liquidation, an incentive fee equal to 10
5 percent of the aggregate amount collected dur-
6 ing each fiscal year. This fee shall be deducted
7 from the amount collected by the Corporation
8 as such assets are liquidated.

9 “(7) Notwithstanding section 4(c)(5) of the
10 Small Business Act (15 U.S.C. 633(c)(5)), control
11 over the outstanding balance in the fund established
12 under section 303(g)(2) of the Small Business In-
13 vestment Act (15 U.S.C. 683(g)(2)) shall be trans-
14 ferred from the Administration to the Corporation
15 for use in carrying out the Corporation’s manage-
16 ment and servicing functions.

17 “(d) REPORT TO CONGRESS.—Not later than 60 days
18 after executing the contract to manage and service the se-
19 curities, commitments, and assets in default of liquidation,
20 the Corporation shall submit to the Committees on Small
21 Business of the Senate and the House of Representatives
22 a report describing the activities of the Administration,
23 the Corporation, and their representatives under this sec-
24 tion.

1 **“SEC. 358. QUALIFICATION OF SMALL BUSINESS INVEST-**
2 **MENT COMPANIES.**

3 “(a) ESTABLISHMENT OF CRITERIA.—The Corpora-
4 tion shall establish appropriate criteria for the qualifica-
5 tion of small business investment companies to conduct
6 business with the Corporation, and shall redetermine the
7 qualifications of any small business investment company
8 upon a change of control due to a transfer of ownership.
9 Such criteria may include, among other things, the general
10 business reputation and character of the owners and man-
11 agement of the small business investment company, and
12 the probability of successful operations of such small busi-
13 ness investment company, including adequate profitability
14 and financial soundness. Licensees in good standing which
15 make capital contributions and acquire common stock of
16 the Corporation pursuant to section 353(a), contract with
17 the Corporation pursuant to the provisions of section
18 359(a), and authorize the release of records to the Cor-
19 poration pursuant to section 323(d) shall be deemed to
20 be qualified under this section.

21 “(b) MINIMUM AMOUNT OF PRIVATE CAPITAL.—
22 Each small business investment company authorized to
23 operate under the authority of this part shall have private
24 capital of not less than \$5,000,000, except that this provi-
25 sion shall not apply to licensees in good standing as of
26 the date the Administration receives notice pursuant to

1 section 352(i). In all cases, such private capital shall be
2 in an amount determined by the Corporation to be ade-
3 quate to assure a reasonable prospect that the company
4 will be operated soundly and profitably, and managed ac-
5 tively and prudently.

6 “(c) BANK PURCHASES OF OWNERSHIP INTERESTS
7 IN SMALL BUSINESS INVESTMENT COMPANIES.—Not-
8 withstanding the provisions of section 23A of the Federal
9 Reserve Act (12 U.S.C. 371c), ownership interests in
10 small business investment companies shall be eligible for
11 purchase by national banks of the Federal Reserve System
12 and nonmember insured banks to the extent permitted
13 under applicable State law, except that in no event may
14 any such bank acquire ownership interests in any small
15 business investment company if, upon the making of that
16 acquisition, the aggregate amount of ownership interest
17 in small business investment companies then held by the
18 bank would exceed 5 percent of its capital and surplus.

19 “(d) POWERS OF SMALL BUSINESS INVESTMENT
20 COMPANIES.—Each small business investment company
21 shall have authority to purchase stock issued by the Cor-
22 poration and to borrow money and to issue debentures and
23 other obligations or securities under such conditions and
24 subject to such rules as the Corporation may prescribe.

1 “(e) INAPPLICABILITY OF CERTAIN PROVISIONS TO
2 SMALL BUSINESS INVESTMENT COMPANIES.—Thirty
3 days after the Administration receives notice from the
4 Corporation pursuant section 352(i), the provisions of sec-
5 tions 301 through 306, sections 308 through 318, and sec-
6 tions 320 through 322 shall not apply to small business
7 investment companies which qualify under section 358(a).

8 “(f) REFERENCES.—All specific references to small
9 business investment companies operating under the Small
10 Business Investment Act of 1958 in any law of the United
11 States, or regulations promulgated thereunder by any
12 agency of the United States Government, or any law of
13 any State in effect on the effective date of this part, shall
14 be deemed to refer to and include small business invest-
15 ment companies operating under the provisions of this
16 part.

17 **“SEC. 359. OPERATIONS OF SMALL BUSINESS INVESTMENT**
18 **COMPANIES.**

19 “(a) RULES.—The Corporation shall contract with
20 small business investment companies qualified under sec-
21 tion 358 governing the operations of such companies in
22 accordance with the provisions and purposes of this title.
23 The Corporation shall adopt rules effectuating the provi-
24 sions of subsections (c) through (o) of this section and
25 such rules, or changes therein, shall be approved by a ma-

1 jority vote of the members of the Board of Directors, in-
2 cluding not less than a majority of the members appointed
3 by the President and confirmed by the Senate.

4 “(b) PROVISION OF EQUITY CAPITAL AND LOANS.—
5 Each small business investment company is authorized to
6 provide equity capital and loans to small business concerns
7 in such manner and under such terms as the small busi-
8 ness investment company may fix in accordance with the
9 rules of the Corporation. Equity investments and loans
10 made under this section may be made directly or in co-
11 operation with other investors or lenders on a participation
12 or guaranteed basis. Each small business investment com-
13 pany may provide consulting and advisory services on a
14 fee basis and have on its staff persons competent to pro-
15 vide such services.

16 “(c) PROHIBITION OF CERTAIN ACTIVITIES.—Small
17 business investment companies shall engage only in lawful
18 activities and those which are contemplated by this title
19 and in no other activities and the Corporation shall adopt
20 rules to so provide.

21 “(d) CONFLICTS.—For the purpose of eliminating
22 conflicts of interest which may be detrimental to small
23 business concerns, to small business investment compa-
24 nies, to the shareholders or partners of either, to the Cor-
25 poration, or to the purposes of this part, the Corporation

1 shall adopt rules to govern transactions with any person
2 or concern, whether direct or indirect, financial or other-
3 wise, involving any small business investment company, or
4 any officer, director, shareholder, or partner of any small
5 business investment company, which would cause such
6 detrimental conflict of interest.

7 “(e) RESTRICTION ON CONTROL OF SMALL BUSI-
8 NESS CONCERNS.—The Corporation shall adopt rules
9 which shall provide that small business investment compa-
10 nies, either singularly or jointly, shall not be permitted to
11 assume control over small business concerns except on a
12 temporary basis if reasonably necessary for the protection
13 of its investment and then only under rules adopted by
14 the Corporation.

15 “(f) INVESTMENT IN SMALL BUSINESS CONCERNS.—
16 Except as otherwise provided by rules adopted by the Cor-
17 poration and approved by the Administration, small busi-
18 ness investment companies shall only invest in a small
19 business concern which, together with its affiliates, is inde-
20 pendently owned and operated, is not dominant, in its field
21 of operations, and—

22 “(1) does not have a net worth in excess of
23 \$18,000,000, and does not have average net income
24 after Federal income taxes (excluding any carry-over

1 losses) for the preceding 2 completed fiscal years in
2 excess of \$6,000,000; or

3 “(2) otherwise qualifies under size standards
4 for financial assistance established by the Adminis-
5 tration under the Small Business Act.

6 “(g) MINIMUM PERIOD OF FINANCINGS.—Except as
7 otherwise provided by rules adopted by the Corporation,
8 financings of small business concerns by small business
9 investment companies shall be for a minimum period of
10 5 years.

11 “(h) LIMITATION ON AMOUNT OF OBLIGATIONS AND
12 SECURITIES FOR SINGLE ENTERPRISE.—Except as other-
13 wise provided by rules adopted by the Corporation, the ag-
14 gregate amount of obligations and securities acquired and
15 for which commitments may be issued by any small busi-
16 ness investment company under the provisions of this title
17 for any single enterprise shall not exceed 20 percent of
18 the private capital of such company.

19 “(i) PROHIBITION ON FINANCING OF CERTAIN AC-
20 TIVITIES.—Except as otherwise provided by rules adopted
21 by the Corporation, small business investment companies
22 shall not provide financing to a small business concern for
23 relending, foreign investments, passive investments, or for
24 the acquisition of real estate.

1 “(j) DETERMINATION OF VALUE OF INVEST-
2 MENTS.—The Board of Directors, including not less than
3 a majority of the members appointed by the President,
4 shall adopt rules to require each small business investment
5 company to adopt written guidelines for determination of
6 the value of investments made by such company. The
7 board of directors of corporations and the general partners
8 of partnerships shall have the sole responsibility for mak-
9 ing a good faith determination of the fair market value
10 of the investments made by such company. Determina-
11 tions shall be made and reported to the Corporation not
12 less than semiannually or at more frequent intervals as
13 the Corporation determines appropriate: *Provided*, That
14 any company which does not have outstanding financial
15 assistance from the Administration or under the provi-
16 sions of this title shall be required to make such deter-
17 minations and reports to the Corporation annually, unless
18 the Corporation, in its discretion, determines otherwise.

19 “(k) MINIMIZATION OF RISK OF LOSS.—The Board
20 of Directors, including not less than a majority of the
21 members appointed by the President, shall adopt rules to
22 minimize the risk of loss to the Corporation on the total
23 amount of securities issued by any individual small busi-
24 ness investment company or by small business investment
25 companies under common control.

1 “(l) FINANCIAL AUDIT.—Each small business invest-
2 ment company shall have a financial audit conducted by
3 an independent certified public accountant certified or li-
4 censed by a regulatory authority of a State or other politi-
5 cal subdivision of the United States at least annually and
6 at such other times as may be required by the Corpora-
7 tion.

8 “(m) COMPLIANCE AUDIT.—At least once every 2
9 years, each small business investment company shall have
10 an audit of such company’s compliance with the rules of
11 the Corporation conducted by an independent certified
12 public accountant selected by the Corporation or, in the
13 discretion of the Corporation, such audit may be con-
14 ducted by employees or agents of the Corporation.

15 “(n) OTHER REPORTS.—Each small business invest-
16 ment company also shall make such other reports to the
17 Corporation at such times and in such form as the Cor-
18 poration may require.

19 “(o) MEASURES TO ENSURE COMPLIANCE.—The
20 Corporation shall adopt appropriate measures to ensure
21 compliance by small business investment companies with
22 the provisions of this section. Failure of a small business
23 investment company to comply with the provisions of this
24 section shall entitle the Corporation to take corrective ac-

1 tion warranted under the circumstances which shall in-
2 clude, but is not limited to—

3 “(1) loss of qualification by such company to do
4 business with the Corporation;

5 “(2) suspension or termination of agreements
6 between the Corporation and such company;

7 “(3) assessment of penalties against such com-
8 pany or its officers, directors, or general partners;

9 “(4) removal or suspension of officers, direc-
10 tors, or general partners of such company; and

11 “(5) assumption of control and operations of
12 such company by the Corporation.

13 In appropriate cases, the Corporation is authorized, in its
14 discretion, to refer violations of law to the Administration
15 for investigation or to refer such violations to the United
16 States Attorney in the jurisdiction in which such violations
17 may have occurred or in which the small business invest-
18 ment company, or its officers, directors, or general part-
19 ners, are located.

20 “(p) STATE LAWS.—In order to facilitate the orderly
21 and necessary flow of long-term loans and equity funds
22 from small business investment companies to small busi-
23 ness concerns, the provisions of the Constitution or the
24 laws of any State expressly limiting the rate or amount
25 of interest, discount points, finance charges, or other

1 charges which may be charged, taken, received, or re-
2 served by lenders shall not apply to any business loan
3 made by a small business investment company pursuant
4 to provisions of this part. This subsection shall apply to
5 business loans made by a small business investment com-
6 pany in any State on or after the effective date of this
7 part, unless such State adopts a law or certifies that the
8 voters of such State have voted in favor of any provision,
9 constitutional or otherwise, which states explicitly and by
10 its terms that such State does not want the provisions of
11 this subsection to apply to business loans made in such
12 State. In any case in which a State takes an action de-
13 scribed in this subsection, such State law or constitutional
14 or other provision shall not apply to any business loan
15 made by a small business investment company pursuant
16 to a commitment to make such loan which was entered
17 into on or after the effective date of this part and prior
18 to the date on which such action was taken.

19 **“SEC. 360. LEVERAGE FORMULA.**

20 “(a) IN GENERAL.—The total amount of leverage
21 that may be provided by the Corporation to a small busi-
22 ness investment company shall not exceed 300 percent of
23 the private capital of such company: *Provided*, That noth-
24 ing in this subsection shall require any such company that
25 on the effective date of this part has outstanding leverage

1 in excess of 300 percent of its private capital to prepay
2 such excess.

3 “(b) FORMULA.—After the effective date of this part,
4 the maximum amount of outstanding leverage made avail-
5 able to a small business investment company by the Cor-
6 poration shall be determined by the amount of such com-
7 pany’s private capital—

8 “(1) if the company has private capital of not
9 more than \$15,000,000, the total amount of lever-
10 age shall not exceed 300 percent of private capital;

11 “(2) if the company has private capital of more
12 than \$15,000,000 but not more than \$30,000,000,
13 the total amount of leverage shall not exceed
14 \$45,000,000 plus 200 percent of the amount of pri-
15 vate capital over \$15,000,000; and

16 “(3) if the company has private capital of more
17 than \$30,000,000, the total amount of leverage shall
18 not exceed \$75,000,000 plus 100 percent of the
19 amount of private capital over \$30,000,000 but not
20 to exceed an additional \$15,000,000.

21 “(c) DEBT AND EQUITY TYPE SECURITIES.—Subject
22 to the foregoing dollar and percentage limits, a small busi-
23 ness investment company may issue to the Corporation
24 both debt and equity type securities: *Provided*, That the
25 total amount of equity type securities issued to the Cor-

1 poration shall not exceed 200 percent of the company's
2 private capital.

3 “(d) MAXIMUM AMOUNT OF OUTSTANDING LEVER-
4 AGE.—In no event shall the aggregate amount of out-
5 standing leverage of any such company or companies
6 which are commonly controlled as determined by the Cor-
7 poration exceed \$90,000,000, unless the Corporation de-
8 termines on a case by case basis to permit a higher
9 amount for companies under common control and imposes
10 such additional terms and conditions as it determines ap-
11 propriate to minimize the risk of loss to the Corporation.

12 **“SEC. 361. AUDITS OF THE CORPORATION.**

13 “(a) ANNUAL AUDIT.—The accounts of the Corpora-
14 tion shall be audited annually. Such audits shall be con-
15 ducted in accordance with generally accepted auditing
16 standards by independent certified public accountants who
17 are certified or licensed by a regulatory authority of a
18 State or other political subdivision of the United States.
19 A report of each such audit shall be furnished to the Office
20 of Investment Oversight. The audit shall be conducted at
21 the place or places where the accounts are normally kept.
22 The representatives of the Office of Investment Oversight
23 shall have access to all books and records of the Corpora-
24 tion, and they shall be afforded full facilities for verifying

1 transactions with the balance or securities held by deposi-
2 tories, fiscal agents, and custodians.

3 “(b) REPORTS BY OFFICE OF INVESTMENT OVER-
4 SIGHT.—A report of each such audit for a fiscal year shall
5 be made by the Office of Investment Oversight to the
6 President and to the Committees on Small Business of
7 the Senate and the House of Representatives not later
8 than 6 months following the close of such fiscal year. The
9 report shall set forth the scope of the audit and shall in-
10 clude a statement of assets and liabilities, capital and sur-
11 plus or deficit, a statement of surplus or deficit analysis,
12 a statement of income and expense, a statement of sources
13 and application of funds, and comments and information
14 as may be deemed necessary to keep the President and
15 the Congress informed of the operations and financial con-
16 dition of the Corporation, together with such recommenda-
17 tions with respect thereto as the Office of Investment
18 Oversight may deem advisable, including a report of any
19 impairment of capital or lack of sufficient capital noted
20 in the audit. A copy of each such report shall be furnished
21 to the Corporation at the same time it is submitted to
22 the President.

1 **“SEC. 362. REGULATION OF FINANCIAL SAFETY AND**
2 **SOUNDNESS.**

3 “(a) ESTABLISHMENT OF OFFICE OF INVESTMENT
4 OVERSIGHT.—There is hereby established in the Small
5 Business Administration an Office to be known as the Of-
6 fice of Investment Oversight, which shall have responsibil-
7 ity for reviewing the regulatory and financial performance
8 of the Corporation as provided herein. The Office shall
9 be headed by a Director who shall be appointed by the
10 Administrator, and shall receive compensation at the rate
11 provided by law for Associate Administrators of the Small
12 Business Administration.

13 “(b) DEFINITIONS.—For purposes of this section, the
14 following definitions apply:

15 “(1) The term ‘core capital’ means, with re-
16 spect to the Corporation, the sum of the following
17 (as determined in accordance with generally accepted
18 accounting principles):

19 “(A) The par value of outstanding common
20 stock.

21 “(B) The par value of outstanding pre-
22 ferred stock.

23 “(C) Paid-in capital.

24 “(D) Retained earnings.

25 “(2) The term ‘regulatory capital’ means, with
26 respect to the Corporation, the core capital of the

1 Corporation plus an allowance for losses, as deter-
2 mined in accordance with generally accepted ac-
3 counting principles.

4 “(c) RISK-BASED CAPITAL TEST.—Not later than 2
5 years after the effective date of this part, the Director of
6 the Office of Investment Oversight shall, by regulation, es-
7 tablish a risk-based capital test under this section for the
8 Corporation. When applied to the Corporation, the risk-
9 based capital test shall determine the amount of regu-
10 latory capital for the Corporation that is sufficient for the
11 Corporation to maintain positive capital during a 10-year
12 period in which both of the following circumstances occur:

13 “(1) CREDIT RISK.—With respect to securities
14 representing an interest in, or obligations backed by,
15 a pool of qualified loans owned or guaranteed by the
16 Corporation and other obligations of the Corpora-
17 tion, losses on the underlying qualified loans occur
18 throughout the United States at a rate of default
19 and severity (based on any measurements of default
20 reasonably related to prevailing industry practice in
21 determining capital adequacy) reasonably related to
22 the rate and severity that occurred in contiguous
23 areas of the United States containing an aggregate
24 of not less than 5 percent of the total population of
25 the United States that, for a period of not less than

1 2 years (as established by the Director), experienced
2 the highest rates of default and severity of venture
3 investing losses in other such areas for any period
4 of such duration, as determined by the Director.

5 “(2) INTEREST RATE RISK.—Interest rates on
6 Treasury obligations of varying terms increase or de-
7 crease over the first 12 months of such 10-year pe-
8 riod by not more than the lesser of (A) 50 percent
9 (with respect to the average interest rates on such
10 obligations during the 12-month period preceding
11 the 10-year period), or (B) 600 basis points, and re-
12 main at such level for the remainder of the period.
13 This paragraph may not be construed to require the
14 Director to determine interest rate risk under this
15 paragraph based on the interest rates for various
16 long-term and short-term obligations all increasing
17 or all decreasing concurrently.

18 “(d) CONSIDERATIONS IN ESTABLISHMENT OF THE
19 TEST.—In establishing the risk based capital test under
20 subsection (c)—

21 “(1) the Director shall take into account appro-
22 priate distinctions based on various types of venture
23 investing products, varying terms of Treasury obli-
24 gations, and any other factors the Director considers
25 appropriate;

1 “(2) the Director shall conform loan and invest-
2 ment data used in determining credit risk to the
3 minimum diversification standards applicable to
4 pools of qualified loans;

5 “(3) the Director shall take into account any
6 retained subordinated participating interests held by
7 the Corporation;

8 “(4) the Director may take into account other
9 methods or tests to determine credit risk developed
10 by the Corporation; and

11 “(5) the Director shall consider any other infor-
12 mation submitted by the Corporation in writing.

13 “(e) REVISING THE TEST.—Upon the expiration of
14 the 6-year period beginning on the effective date of this
15 part, the Director shall examine the risk-based capital test
16 under subsection (c) and may revise the test. In making
17 revisions under this subsection, the Director shall take
18 into account that, before the effective date of this part,
19 the Corporation did not issue or guarantee securities
20 based on pools of qualified loans and investments. To the
21 extent that the revision of the risk-based capital test
22 causes a change in the classification of the corporation
23 within the enforcement levels established under subsection
24 (k), the Director shall waive the applicability of any addi-
25 tional enforcement actions available because of such

1 change for a reasonable period of time, to permit the Cor-
2 poration to increase the amount of regulatory capital of
3 the Corporation accordingly.

4 “(f) RISK BASED CAPITAL LEVEL.—For purposes of
5 this section, the risk-based capital level for the Corpora-
6 tion shall be equal to the sum of the following amounts:

7 “(1) CREDIT AND INTEREST RATE RISK.—The
8 amount of the regulatory capital determined by ap-
9 plying the risk-based capital test under subsection
10 (c) to the Corporation, adjusted to account for for-
11 eign exchange risk.

12 “(2) MANAGEMENT AND OPERATIONS RISK.—
13 To provide for management and operations risk, 30
14 percent of the amount of regulatory capital deter-
15 mined by applying the risk-based capital test under
16 subsection (c) to the Corporation.

17 “(g) REGULATIONS.—The regulations establishing
18 the risk-based capital test under this section shall contain
19 specific requirements, definitions, methods, variables, and
20 parameters used under the risk-based capital test and in
21 implementing the test (such as loan loss severity, float in-
22 come, loan-to-value ratios, taxes, yield curve slopes, de-
23 fault experience, prepayment rates, and performance of
24 pools of qualified loans and investments). The regulations
25 shall be sufficiently specific to permit an individual other

1 than the Director to apply the test in the same manner
2 as the Director.

3 “(h) AVAILABILITY OF STATISTICAL MODEL.—The
4 Director shall make copies of the statistical model or mod-
5 els used to implement the risk-based capital test under
6 this section available for public acquisition and may
7 charge a reasonable fee for such copies.

8 “(i) MINIMUM CAPITAL LEVEL.—For purposes of
9 this section, after the 6th year following the effective date
10 of this part the minimum capital level for the Corporation
11 shall be an amount of core capital equal to the sum of—

12 “(1) 2.00 percent of the aggregate on-balance
13 sheet assets of the Corporation, as determined in ac-
14 cordance with generally accepted accounting prin-
15 ciples; and

16 “(2) 0.30 percent of the unpaid principal bal-
17 ance of outstanding securities issued by the Corpora-
18 tion and backed by pools of qualified loans and in-
19 vestments and substantially equivalent instruments
20 issued or guaranteed by the Corporation, and other
21 off-balance sheet obligations of the corporation.

22 “(j) CRITICAL CAPITAL LEVEL.—For the purposes of
23 this section, the critical capital level for the Corporation
24 shall be an amount of core capital equal to the sum of—

1 “(1) 1.25 percent of the aggregate on-balance
2 sheet assets of the Corporation, as determined in ac-
3 cordance with generally accepted accounting prin-
4 ciples; and

5 “(2) 0.20 percent of the unpaid balance of out-
6 standing securities guaranteed by the Corporation
7 and backed by pools of qualified loans and invest-
8 ments and substantially equivalent instruments is-
9 sued or guaranteed by the Corporation, and other
10 off-balance sheet obligations of the Corporation.

11 “(k) ENFORCEMENT LEVELS.—The Director shall
12 classify the Corporation, for purposes of this section, ac-
13 cording to the following enforcement levels:

14 “(1) LEVEL I.—The Corporation shall be classi-
15 fied as within level I if the Corporation—

16 “(A) maintains an amount of regulatory
17 capital that is equal to or exceeds the risk-
18 based capital level established under section (c);
19 and

20 “(B) equals or exceeds the minimum cap-
21 ital level established under subsection (i).

22 “(2) LEVEL II.—The Corporation shall be clas-
23 sified as within level II if the Corporation—

1 “(A)(i) maintains an amount or regulatory
2 capital that is less than the risk-based capital
3 level; and

4 “(ii) equals or exceeds the minimum cap-
5 ital level; or

6 “(B) is otherwise classified as within level
7 II under subsection (b)

8 “(3) LEVEL III.—The Corporation shall be clas-
9 sified as within level III if the Corporation—

10 “(A)(i) does not equal or exceed the mini-
11 mum capital level; and

12 “(ii) equals or exceeds the critical capital
13 level established under subsection (j); or

14 “(B) is otherwise classified as within level
15 III under subsection (b).

16 “(4) LEVEL IV.—The Corporation shall be clas-
17 sified as within level IV if the Corporation—

18 “(A) does not equal or exceed the critical
19 capital level; or

20 “(B) is otherwise classified as within level
21 IV under subsection (b).

22 “(1) DISCRETIONARY CLASSIFICATION.—If, at any
23 time, the Director determines in writing (and provides
24 written notification to the Corporation and the Adminis-
25 tration) that the Corporation is taking any action not ap-

1 proved by the Director that could result in a rapid deple-
2 tion of core capital or that the value of the property
3 securitized by the Corporation or subject to underlying se-
4 curities guaranteed by the Corporation has decreased sig-
5 nificantly, the Director may classify the Corporation—

6 “(1) as within level II, if the Corporation is
7 otherwise within level I;

8 “(2) as within level III, if the Corporation is
9 otherwise within level II; or

10 “(3) as within level IV, if the Corporation is
11 otherwise within level III.

12 “(m) SEMI-ANNUAL DETERMINATION.—After the
13 6th year following the effective date of this part, the Di-
14 rector shall determine the classification of the Corporation
15 for purposes of this part on not less than a semi-annual
16 basis.

17 “(n) NOTICE.—Upon determining under subsection
18 (c) or (i) that the Corporation is within level II or III,
19 the Director shall provide written notice to the Congress
20 and to the Corporation—

21 “(1) that the Corporation is within such level;

22 “(2) that the Corporation is subject to the pro-
23 visions of subsection (o) or (q), as applicable; and

24 “(3) stating the reasons for the classification of
25 the Corporation within such level.

1 “(o) MANDATORY ACTIONS APPLICABLE TO LEVEL
2 II.—If the Corporation is classified as within level II, the
3 Corporation shall—

4 “(1) within the time period determined by the
5 Director, submit to the Director a capital restoration
6 plan and, after approval, carry out the plan; and

7 “(2) not make any payment of dividends that
8 would result in the Corporation being reclassified as
9 within level III or IV.

10 “(p) RECLASSIFICATION FROM LEVEL II TO LEVEL
11 III.—The Director shall immediately reclassify the Cor-
12 poration as within level III (and the Corporation shall be
13 subject to the provisions of section (q)) if—

14 “(1) the Corporation is within level II; and

15 “(2)(A) the Corporation does not submit a cap-
16 ital restoration plan that is approved by the Direc-
17 tor; or

18 “(B) the Director determines that the Corpora-
19 tion has failed to make, in good faith, reasonable ef-
20 forts necessary to comply with such a capital res-
21 toration plan and fulfill the schedule for the plan ap-
22 proved by the Director.

23 “(q) SUPERVISORY ACTIONS APPLICABLE TO LEVEL
24 III.—If the Corporation is classified as within level III—

1 “(1) the Corporation shall, within the time pe-
2 riod determined by the Director, submit to the Di-
3 rector a capital restoration plan and, after approval,
4 carry out the plan; and

5 “(2) the Corporation shall not make any pay-
6 ment of dividends that would result in the Corpora-
7 tion being reclassified as within level IV or make any
8 other payment of dividends unless the Director ap-
9 proves the payment before it is made.

10 “(3) the Director may approve a payment of
11 dividends by the Corporation only if the Director de-
12 termines that the payment—

13 “(A) will enhance the ability of the Cor-
14 poration to meet the risk-based capital level and
15 the minimum capital level promptly;

16 “(B) will contribute to the long-term safety
17 and soundness of the Corporation; or

18 “(C) is otherwise in the public interest.

19 “(r) RECLASSIFICATION FROM LEVEL III TO LEVEL
20 IV.—The Director shall immediately reclassify the Cor-
21 poration as within level IV if—

22 “(1) the Corporation is classified as within level
23 III; and

1 “(2)(A) the Corporation does not submit a cap-
2 ital restoration plan that is approved by the Direc-
3 tor; or

4 “(B) the Director determines that the Corpora-
5 tion has failed to make, in good faith, reasonable ef-
6 forts necessary to comply with such a capital res-
7 toration plan and fulfill the schedule for the plan ap-
8 proved by the Director.

9 “(s) DISCRETIONARY SUPERVISORY ACTIONS.—In
10 addition to any other actions taken by the Director (in-
11 cluding actions under subsection (q)), the Director may,
12 at any time, take any of the following actions if the Cor-
13 poration is classified as within level III:

14 “(1) Limit any increase in, or order the reduc-
15 tion of, any obligations of the Corporation, including
16 off-balance sheet obligations.

17 “(2) Limit or prohibit the growth of the assets
18 of the Corporation or require contraction of the as-
19 sets of the Corporation.

20 “(3) Prohibit the Corporation from making any
21 payment of dividends.

22 “(4) Require the Corporation to acquire new
23 capital in any form and in any amount sufficient to
24 provide for the reclassification of the Corporation as
25 within level II.

1 “(5) Require the Corporation to terminate, re-
2 duce, or modify any activity that the Director deter-
3 mines creates excessive risk to the Corporation.

4 “(6) Appoint a conservator for the Corporation
5 consistent with this Act.

6 **“SEC. 363. GOVERNMENT OVERSIGHT AND REPORTS.**

7 “(a) COMMITTEES ON SMALL BUSINESS.—In order
8 to conduct legislative oversight of the Corporation’s activi-
9 ties, the Committees on Small Business of the Senate and
10 the House of Representatives shall have access to the
11 books and records of the Corporation at any time.

12 “(b) GENERAL ACCOUNTING OFFICE.—At the re-
13 quest of either the Committee on Small Business of the
14 Senate or the House of Representatives, the books and
15 records of the Corporation shall be subject to examination
16 by the General Accounting Office.

17 “(c) OFFICE OF INVESTMENT OVERSIGHT.—In order
18 to ensure that the public purposes of this part are carried
19 out, the Office of Investment Oversight shall have author-
20 ity to review the Corporation’s criteria for the qualification
21 of small business investment companies to conduct busi-
22 ness with the Corporation and the Corporation’s rules gov-
23 erning the operations of small business investment compa-
24 nies. The Office of Investment Oversight may examine the
25 books and records of the Corporation and may require the

1 Corporation to make such reports as the Administration
2 deems desirable. Not later than January 31st of each year,
3 the Office of Investment Oversight shall submit to the
4 Committees on Small Business of the Senate and the
5 House of Representatives a report containing findings
6 made by the Office under this section.

7 “(d) ANNUAL REPORT BY CORPORATION.—The Cor-
8 poration shall, as soon as practicable after the end of each
9 fiscal year, transmit to the President, the Committees on
10 Small Business of the Senate and the House of Represent-
11 atives, and the Administration a report on its operations
12 and activities for such fiscal year.

13 “(e) REPORT BY GENERAL ACCOUNTING OFFICE.—
14 Not later than 7 years after the effective date of this part,
15 the General Accounting Office shall prepare a report to
16 be transmitted to the Committees on Small Business of
17 the Senate and the House of Representatives. The report
18 shall review the impact that the Corporation has had in
19 achieving the purposes of the Venture Capital Marketing
20 Association Charter Act, including but not limited to an
21 assessment of the impact on small business concerns re-
22 ceiving funding through the Corporation’s activities and
23 the impact on small business investment companies as a
24 result of the Corporation’s activities. In preparing this re-

1 port, the General Accounting Office shall have access to
2 the books and records of the Corporation.

3 **“SEC. 364. BOOKS AND RECORDS.**

4 “The Administration shall furnish to the Corporation
5 all books and records of the Administration necessary to
6 carry out the provisions of this title within 30 days after
7 written request by the Corporation. Any such information
8 received by the Corporation shall be kept confidential by
9 the Corporation, its officers, agents, and employees under
10 the same provisions which would have been applicable if
11 it had been retained by the Administration.”.

12 **SEC. 4. TRANSFER AND PHASE-OUT.**

13 (a) IN GENERAL.—Title III of the Small Business
14 Investment Act of 1958 is amended by inserting after sec-
15 tion 322 the following:

16 **“SEC. 323. TRANSFER AND PHASE-OUT.**

17 “(a) DEADLINE.—A licensee in good standing shall
18 have a period of 3 months from the date the Administra-
19 tion receives notice under section 352(i) in which to qual-
20 ify under section 358(a).

21 “(b) ISSUANCE OF REGULATIONS.—Within 6 months
22 after receiving notice under section 352(i), the Adminis-
23 tration shall promulgate final rules and regulations to ef-
24 fect the orderly termination of operations of any license
25 in good standing which has not qualified under section

1 358(a), and the Administration shall enter into a contrac-
2 tual agreement with the Corporation which provides for
3 the administration of such rules and regulations by the
4 Corporation.

5 “(c) REQUIREMENTS FOR REGULATIONS.—The final
6 rules and regulations adopted by the Administration for
7 termination of the operations of any licensee under sub-
8 section (b) of this section shall, among other things, sus-
9 pend such licensees’s authority to obtain financial assist-
10 ance from the Administration and shall require revocation
11 of the license of any such licensee effective within 2 years
12 after the publication of such rules and regulations, except
13 that the license revocation for any such licensee which has
14 outstanding debentures shall be within 2 years after such
15 debentures are due or paid, whether voluntarily or other-
16 wise.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
18 tents contained in section 101 of the Small Business In-
19 vestment Act of 1958 (15 U.S.C. 661 note), as amended
20 by section 2(a) of this Act, is further amended by inserting
21 after the item relating to section 322 the following:

“Sec. 323. Transfer and phase-out.”.

22 **SEC. 5. DEFINITIONS.**

23 Section 103 of the Small Business Investment Act
24 of 1958 (15 U.S.C. 662) is amended—

1 (1) by inserting before the semicolon in para-
2 graph (3) the following: “or a company qualified to
3 conduct business with the Corporation under section
4 358”;

5 (2) by striking paragraph (9) and inserting the
6 following:

7 “(9) notwithstanding any other provision of
8 law, the term ‘private capital’ means the combined
9 private paid-in capital and paid-in surplus of a cor-
10 porate small business investment company, or the
11 private partnership capital of an unincorporated
12 small business investment company, inclusive of (A)
13 any funds invested in the small business investment
14 company by a public or private pension fund, (B)
15 any funds invested in the small business investment
16 company by State or local government entities, to
17 the extent that such investment does not exceed 33
18 percent of a small business investment company’s
19 total private capital and otherwise meets criteria es-
20 tablished by the Corporation, and (C) unfunded
21 commitments from institutional or individual inves-
22 tors that meet criteria established by the Corpora-
23 tion, but it excludes any funds which are borrowed
24 by the small business investment company from any
25 source or which are obtained or derived, directly or

1 indirectly, from any Federal source, including the
2 Administration: *Provided*, That no unfunded com-
3 mitment from an investor may be used for the pur-
4 pose of meeting the minimum amount of private
5 capital required by this Act or as the basis for the
6 Corporation to issue obligations or securities to pro-
7 vide financing to small business investment compa-
8 nies;”;

9 (3) by striking the period at the end of para-
10 graph (10) and inserting a semicolon; and

11 (4) by adding at the end the following:

12 “(11) the term ‘Corporation’ means the Ven-
13 ture Capital Marketing Association, as constituted
14 under this Act;

15 “(12) the term ‘Board of Directors’ means the
16 Board of Directors of the Corporation;

17 “(13) the term ‘law’ includes any law of the
18 United States or any State (including any rule of
19 law or of equity);

20 “(14) the term ‘organization’ means any cor-
21 poration, partnership, association, business trust, or
22 other business entity;

23 “(15) the term ‘security’ has the meaning given
24 such term by section 2(l) of the Securities Act of
25 1933 (15 U.S.C. 77b(l));

1 “(16) the term ‘small business investment secu-
2 rity’ includes—

3 “(A) debentures, bonds, promissory notes,
4 obligations or equity securities issued by small
5 business investment companies; and

6 “(B) such other small business investment
7 company securities as determined by the Cor-
8 poration;

9 “(17) the term ‘licensee in good standing’
10 means a small business investment company which
11 was approved by the Administration to operate
12 under the provisions of this Act and was issued a li-
13 cense as provided in section 301, unless such li-
14 censee (A) is in default under Debentures issued to
15 the Administration and such Debentures have been
16 declared due and payable by the Administration, (B)
17 has engaged in events which the Administration has
18 determined to be in violation of provisions of Partici-
19 pating Securities or Preferred Securities, or (C) has
20 been placed in liquidation status by the Administra-
21 tion; and

22 “(18) the term ‘books and records of the Cor-
23 poration’ means the books and records of the Ven-
24 ture Capital Marketing Association, including but
25 not limited to books, accounts, financial records, re-

1 ports, files, all memoranda and documents obtained
2 by employees or agents of the Corporation or by
3 independent certified public accountants during au-
4 dits of small business investment companies and all
5 reports and information from such companies to the
6 Corporation, and all other papers, things or property
7 belonging to or in use by the Corporation.

8 **SEC. 6. AMENDMENT TO SMALL BUSINESS ACT.**

9 Section 5(b)(2) of the Small Business Act (15 U.S.C.
10 634(b)(2)) is amended by striking “collection;” and by in-
11 serting “collection: *Provided*, That nothing in this Act nor
12 any other law shall authorize the Administration to sell,
13 hypothecate, pledge, or in any way encumber small busi-
14 ness investment securities made or issued by such Admin-
15 istration except as authorized by section 357 of the Small
16 Business Investment Act of 1958;”.

17 **SEC. 7. AMENDMENT TO REVISED STATUTES.**

18 The 6th sentence of the 7th paragraph of section
19 5136 of the Revised Statutes of the United States (12
20 U.S.C. 24) is amended by inserting after “Student Loan
21 Marketing Association,” the following: “or obligations or
22 other instruments or securities of the Venture Capital
23 Marketing Association,”.

1 **SEC. 8. EFFECT ON OTHER LAWS.**

2 Except as otherwise provided by this Act, or as other-
 3 wise provided by the Corporation or by the laws hereafter
 4 enacted by the Congress expressly in limitations of provi-
 5 sions of this Act, the powers and functions of the Corpora-
 6 tion and of the Board of Directors shall be exercisable,
 7 and the provisions of this Act shall be applicable and effec-
 8 tive, without regard to any other law.

9 **SEC. 9. APPLICABILITY TO STATES, TERRITORIES, AND**
 10 **POSSESSIONS.**

11 Notwithstanding any other law, this Act and the
 12 amendments made by this Act shall be applicable to the
 13 several States, the District of Columbia, and Common-
 14 wealth of Puerto Rico, and the territories and possessions
 15 of the United States.

16 **SEC. 10. AMENDMENT TO TITLE 18.**

17 Section 1006 of title 18, United States Code, is
 18 amended by inserting before “or any Small Business In-
 19 vestment Company,” the following: “, the Venture Capital
 20 Marketing Association,”.

21 **SEC. 11. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall
 23 become effective on the date of the enactment of this Act.

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