

119TH CONGRESS
1ST SESSION

S. _____

To establish a domestic ownership investment facility, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. VAN HOLLEN (for himself, Mr. MORAN, Ms. BALDWIN, Mr. YOUNG, Mrs. SHAHEEN, Mr. SCHMITT, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish a domestic ownership investment facility, 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 “American Ownership
5 and Resilience Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) 1940 ACT COMPANY.—The term “1940 Act
9 Company” means an investment company subject to

1 registration under the Investment Company Act of
2 1940 (15 U.S.C. 80a–1 et seq.).

3 (2) 1980 ACT COMPANY.—The term “1980 Act
4 Company” means an investment company subject to
5 registration under the Small Business Investment
6 Incentive Act of 1980 (15 U.S.C. 80a–51 et seq.).

7 (3) ARTICLES.—The term “articles” means—

8 (A) articles of incorporation for an incor-
9 porated body; or

10 (B) the functional equivalent or other simi-
11 lar documents specified by the Secretary for
12 other business entities.

13 (4) CAPITAL INTEREST.—The term “capital in-
14 terest” means an interest in a subsidiary LLC deter-
15 mined at the time of receipt that gives the holder of
16 the interest a share of the proceeds in a complete
17 liquidation of the subsidiary LLC if the assets of the
18 subsidiary LLC are sold at fair market value.

19 (5) COVERED BUSINESS CONCERN.—The term
20 “covered business concern” means an enterprise, re-
21 gardless of any size standard, that is independently
22 owned and operated, except that an investment by a
23 venture capital firm, investment company, employee
24 welfare benefit plan or pension plan, or trust, foun-
25 dation, or endowment that is exempt from Federal

1 income taxation shall not cause a business concern
2 to be deemed not independently owned and operated
3 regardless of the allocation of control during the in-
4 vestment period under any investment agreement be-
5 tween the business concern and the entity making
6 the investment.

7 (6) COVERED INVESTMENT.—The term “cov-
8 ered investment” means, with respect to an invest-
9 ment in a covered business concern—

10 (A) the provision of capital to finance the
11 sale of an ownership interest of a covered busi-
12 ness concern, including a covered business con-
13 cern created as a result of a corporate divesti-
14 ture, to an employee stock ownership plan or el-
15 igible worker-owned cooperative if such sale re-
16 sults in—

17 (i) the employee stock ownership plan
18 or eligible worker-owned cooperative, re-
19 spectively, holding a majority interest of
20 the outstanding stock of the covered busi-
21 ness concern; and

22 (ii) with respect to such a sale to an
23 employee stock ownership plan, the ap-
24 pointment of an independent trustee for
25 the transaction; or

1 (B) the provision of capital to finance a
2 covered business concern if—

3 (i) an employee stock ownership plan
4 or eligible worker-owned cooperative holds
5 a majority interest of the outstanding
6 stock of the covered business concern,
7 prior to and immediately following the pro-
8 vision of capital; and

9 (ii) the provision of capital does not
10 reduce the percentage of stock of the cov-
11 ered business concern held by the employee
12 stock ownership plan or eligible worker-
13 owned cooperative (as applicable), exclud-
14 ing any synthetic equity.

15 (7) DEPARTMENT.—The term “Department”
16 means the Department of Commerce.

17 (8) ELIGIBLE WORKER-OWNED COOPERA-
18 TIVE.—The term “eligible worker-owned coopera-
19 tive” has the meaning given that term in section
20 1042(e) of the Internal Revenue Code of 1986.

21 (9) EMPLOYEE STOCK OWNERSHIP PLAN.—The
22 term “employee stock ownership plan” has the
23 meaning given that term in section 4975(e) of the
24 Internal Revenue Code of 1986.

1 (10) EMPLOYEE WELFARE BENEFIT PLAN;
2 PENSION PLAN.—The terms “employee welfare ben-
3 efit plan” and “pension plan”—

4 (A) have the meanings given those terms
5 in section 3 of the Employee Retirement In-
6 come Security Act of 1974 (29 U.S.C. 1002);
7 and

8 (B) include—

9 (i) public and private pension or re-
10 tirement plans subject to such Act; and

11 (ii) similar plans not covered by such
12 Act that have been established and that
13 are maintained by the Federal Government
14 or any State or political subdivision, or any
15 agency or instrumentality thereof, for the
16 benefit of employees.

17 (11) INDEPENDENT FINANCIAL ADVISOR.—The
18 term “independent financial advisor” means a finan-
19 cial or valuation advisor that—

20 (A) is in the profession of serving as a fi-
21 nancial or valuation advisor for transactions in-
22 volving employee stock ownership plans;

23 (B) has never—

24 (i) performed services, including a
25 preliminary valuation, for or on behalf of—

1 (I) any party selling an owner-
2 ship interest in the covered business
3 concern to the employee stock owner-
4 ship plan involved in the transaction
5 that the advisor is evaluating; or

6 (II) the covered business concern,
7 unless the services were provided sole-
8 ly to an existing employee stock own-
9 ership plan sponsored by the covered
10 business concern; or

11 (ii) been a director, officer, or em-
12 ployee of the covered business concern;

13 (C) has not performed services related to
14 the transaction the advisor is evaluating, includ-
15 ing a preliminary valuation, for or on behalf
16 of—

17 (i) the ownership investment company
18 that is preparing to or has already allo-
19 cated capital to the covered business con-
20 cern; or

21 (ii) any other entity that is struc-
22 turing or financing the transaction for any
23 party other than the employee stock owner-
24 ship plan; and

1 (D) does not have a familial or corporate
2 relationship (such as a parent-subsidary rela-
3 tionship) to any of person or entity described in
4 subparagraph (B) or (C).

5 (12) INDEPENDENT TRUSTEE.—The term
6 “independent trustee” means a trustee that—

7 (A) is in the profession of serving as a fi-
8 duciary for employee stock ownership plans;

9 (B) has never—

10 (i) performed services for or on behalf
11 of any party selling an ownership interest
12 in the covered business concern to the em-
13 ployee stock ownership plan involved in the
14 transaction that the trustee is considering;
15 or

16 (ii) been a director, officer, or em-
17 ployee of the covered business concern;

18 (C) has not performed services for or on
19 behalf of the covered business concern at any
20 time during the 5-year period ending on the
21 date of execution of the transaction the trustee
22 is considering, unless such services solely con-
23 sisted of acting as a fiduciary of an employee
24 benefit plan (including an employee stock own-
25 ership plan) under the Employee Retirement

1 Income Security Act of 1974 (29 U.S.C. 1001
2 et seq.);

3 (D) has not performed services related to
4 the transaction the trustee is considering, for or
5 on behalf of—

6 (i) the ownership investment company
7 that is preparing to or has already allo-
8 cated capital to the covered business con-
9 cern; or

10 (ii) any other entity that is struc-
11 turing or financing the transaction for any
12 party other than the employee stock owner-
13 ship plan; and

14 (E) does not have a familial or corporate
15 relationship (such as a parent-subsi-
16 diary relationship) to any person or entity described in
17 subparagraph (B), (C), or (D).

18 (13) LEVERAGE.—The term “leverage” means
19 debentures guaranteed by the Department.

20 (14) LICENSE.—The term “license” means a li-
21 cense issued by the Department as provided in sec-
22 tion 4(c).

23 (15) LICENSEE.—The term “licensee” means a
24 company approved by the Secretary to operate under

1 the provisions of this Act and issued a license pro-
2 vided in section 4(c).

3 (16) LIMITED LIABILITY COMPANY.—The term
4 “limited liability company” means a business entity
5 that is organized and operating in accordance with
6 a State limited liability company statute approved by
7 the Department.

8 (17) MEMBER.—The term “member” means,
9 with respect to a licensee that is a limited liability
10 company, a holder of an ownership interest or a per-
11 son otherwise admitted to membership in the limited
12 liability company.

13 (18) NON-LEVERAGED LICENSEE.—The term
14 “non-leveraged licensee” means a licensee that—

15 (A) has no outstanding leverage or lever-
16 age commitment; and

17 (B) certifies to the Department in writing
18 that the licensee will not seek leverage in the
19 future.

20 (19) OUTSTANDING STOCK.—The term “out-
21 standing stock” means shares of stock, including
22 synthetic equity.

23 (20) OWNERSHIP INVESTMENT COMPANY.—The
24 term “ownership investment company” means—

1 (A) a company approved by the Secretary
2 to operate under the provisions of this Act and
3 issued a license as provided in section 4(c); and

4 (B) for which—

5 (i) 100 percent of the total capital
6 managed by the investment firm shall be
7 invested in covered investments;

8 (ii) not less than 50 percent of the
9 total capital managed by the investment
10 firm shall be invested in covered invest-
11 ments described in paragraph (6)(A); and

12 (iii) covered investment returns are
13 obtained from debt, synthetic equity, pre-
14 ferred stock, equity, or a combination
15 thereof, including returns obtained from
16 cash interest, payment-in-kind interest,
17 and stock warrants.

18 (21) PREFERRED STOCK.—The term “preferred
19 stock” has the meaning given that term in section
20 351(g)(3) of the Internal Revenue Code of 1986.

21 (22) PRIVATE CAPITAL.—The term “private
22 capital”—

23 (A) means the sum of—

24 (i) the paid-in capital and paid-in sur-
25 plus of a corporate licensee, the contrib-

1 chartered or government-sponsored
2 corporation established before October
3 1, 1987;

4 (II) funds invested by an em-
5 ployee welfare benefit plan or pension
6 plan; and

7 (III) any qualified nonprivate
8 funds (if the investors of the qualified
9 nonprivate funds do not control, di-
10 rectly or indirectly, the management,
11 board of directors, general partners,
12 or members of the licensee).

13 (23) PROFITS INTEREST.—The term “profits
14 interests” means an interest in a subsidiary LLC
15 other than a capital interest.

16 (24) PROTÉGÉ OIC.—The term “Protégé OIC”
17 means an entity licensed under section 4(c) as an
18 ownership investment company and selected in ac-
19 cordance with section 6—

20 (A) for which the managers of the firm
21 have a documented record of successful busi-
22 ness experience; and

23 (B) that has an investment track record
24 that does not meet the requirements under sec-
25 tion 4(c)(3)(B)(i).

1 (25) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce.

3 (26) STATE.—The term “State” includes the
4 several States, the territories and possessions of the
5 United States, the Commonwealth of Puerto Rico,
6 and the District of Columbia.

7 (27) SUBSIDIARY LLC.—The term “subsidiary
8 LLC” means a limited liability company owned by a
9 corporation through equity ownership of the sub-
10 sidiary with a common parent corporation, as de-
11 scribed in section 1563 of the Internal Revenue
12 Code of 1986, in which—

13 (A) the equity of the subsidiary LLC
14 owned by the corporation possesses not less
15 than 80 percent of the total combined voting
16 power of all classes of equity of the subsidiary
17 LLC entitled to vote; and

18 (B) the equity value of the subsidiary LLC
19 owned by the corporation that represents—

20 (i) not less than 51 percent of the
21 total value of all classes of equity of the
22 subsidiary LLC; and

23 (ii) not less than 51 percent equity
24 ownership of the subsidiary LLC.

1 (28) SYNTHETIC EQUITY.—The term “synthetic
2 equity” includes—

3 (A) synthetic equity, as defined in section
4 409(p)(6) of the Internal Revenue Code of
5 1986;

6 (B) a profits interest of a subsidiary LLC
7 granted to, purchased by, or otherwise obtained
8 directly or indirectly by employees and directors
9 of the subsidiary LLC; and

10 (C) nonqualified deferred compensation
11 plans and arrangements subject to section 409A
12 of the Internal Revenue Code of 1986.

13 (29) THIRD PARTY DEBT.—The term “third
14 party debt” means any indebtedness for borrowed
15 money, other than indebtedness owed to the Depart-
16 ment.

17 **SEC. 3. OWNERSHIP INVESTMENT FACILITY.**

18 (a) DEFINITION OF FACILITY.—In this section, the
19 term “facility” means the facility established under sub-
20 section (b).

21 (b) ESTABLISHMENT.—The Secretary shall establish
22 and carry out a facility to provide leverage to licensed own-
23 ership investment companies for the purpose of encour-
24 aging covered investments.

1 (c) COMBINED LEVERAGE.—The Secretary may not
2 provide leverage to ownership investment companies under
3 the facility in a total amount that is greater than
4 \$5,000,000,000 for a fiscal year. Not more than 20 per-
5 cent of such total amount may be provided to Protégé OIC
6 companies for a fiscal year.

7 (d) TRANSACTION REQUIREMENTS.—

8 (1) IN GENERAL.—With respect to a covered in-
9 vestment described in section 2(6)(A) involving a
10 sale to an employee stock ownership plan, an inde-
11 pendent trustee for the employee stock ownership
12 plan shall be appointed by the covered business con-
13 cern before the execution of the covered investment
14 for a period of time that is sufficient for the inde-
15 pendent trustee to fully evaluate the proposed trans-
16 action.

17 (2) FAIRNESS OPINION.—With respect to the
18 scope of appointment under paragraph (1), an inde-
19 pendent trustee appointed under paragraph (1) shall
20 obtain a fairness opinion on the proposed covered in-
21 vestment from an independent financial advisor,
22 which shall evaluate whether the price, terms, and
23 cost of financing of the proposed covered investment
24 are financially fair to the employee stock ownership
25 plan.

1 (e) PROHIBITIONS.—

2 (1) FINANCING.—

3 (A) IN GENERAL.—An employee of a cov-
4 ered business concern may not provide personal
5 financing of any kind for a covered investment,
6 including through a wage concession or rollover
7 of a retirement plan.

8 (B) EXCEPTIONS.—Subparagraph (A)
9 shall not apply to—

10 (i) financing provided by an employee
11 for the sale of an ownership interest held
12 by the employee in a covered business con-
13 cern; or

14 (ii) employee capital contributions or
15 membership fees paid by members of an el-
16 igible worker-owned cooperative, if such
17 amounts are reasonable and customary
18 and not used for the purchase of the cov-
19 ered business concern.

20 (2) CONTROL.—An ownership investment com-
21 pany shall not exercise control over a covered busi-
22 ness concern in which the ownership investment
23 company has made a covered investment.

24 (f) EMPLOYEE ALLOCATIONS.—With respect to a
25 covered investment described in section 2(6)(A) made by

1 an ownership investment company that involves an em-
2 ployee stock ownership plan, the employee stock ownership
3 plan shall include a requirement that in the event of a
4 sale to a third party of the covered business concern in
5 which the covered investment is made, the proceeds that
6 the employee stock ownership plan receives from the sale
7 shall be distributed as though all shares of stock held by
8 the employee stock ownership plan prior to the sale were
9 fully allocated based on each participant's compensation,
10 as defined under section 415(c)(3) of the Internal Revenue
11 Code of 1986.

12 (g) RECIRCULATION OF SHARES.—

13 (1) SHARE COUNT.—With respect to a covered
14 investment described in section 2(6)(A) made by an
15 ownership investment company that involves an em-
16 ployee stock ownership plan, the number of shares
17 held by the employee stock ownership plan on the
18 final date of each plan year shall not be less than
19 the number of shares held by the employee stock
20 ownership plan on the execution date of the covered
21 investment.

22 (2) LIMITATION.—The requirements under
23 paragraph (1) shall apply only with respect to the
24 period during which the ownership investment com-

1 pany has an interest in the covered business con-
2 cern.

3 (3) EXCEPTION.—The requirement under para-
4 graph (1) may be waived by the independent trustee
5 for the applicable employee stock ownership plan.

6 (h) INDEPENDENT TRUSTEES.—With respect to a
7 covered investment described in section 2(6)(A) made by
8 an ownership investment company that involves an em-
9 ployee stock ownership plan, the employee stock ownership
10 plan shall have an independent trustee during the period
11 that the ownership investment company has an interest
12 in the covered business concern.

13 (i) SUBSIDIARY LLCs.—With respect to any covered
14 investment made by an ownership investment company
15 that involves an employee stock ownership plan, a sub-
16 sidiary LLC may be permitted to be established, provided
17 that the following requirements are met:

18 (1) ESOP MAJORITY INTEREST.—The employee
19 stock ownership plan exercises a majority interest in
20 the subsidiary LLC as a result of the sale or provi-
21 sion of capital.

22 (2) S CORPORATION BOARD GOVERNANCE.—
23 The board governance of the subsidiary LLC resides
24 exclusively at the level of the S corporation by which
25 the subsidiary LLC is owned.

1 (3) PROFITS INTEREST.—The profits interest
2 or any type of similar arrangements, including phan-
3 tom stock and any deferred bonus plan related to eq-
4 uity in the subsidiary LLC, complies with section
5 409(p) of the Internal Revenue Code of 1986.

6 (4) EVENT PROTECTION.—The requirements of
7 subsection (f) apply at the level of the subsidiary
8 LLC.

9 (j) PROCEDURES RELATED TO A SALE OF A COV-
10 ERED BUSINESS CONCERN.—

11 (1) IN GENERAL.—Subject to paragraph (2), an
12 ownership investment company shall require as a
13 condition of making a covered investment described
14 in section 2(6)(A) involving an employee stock own-
15 ership plan that—

16 (A) before any stock sale or the execution
17 of any corporate matter listed in section
18 409(e)(3) of the Internal Revenue Code of
19 1986, the employee stock ownership plan
20 shall—

21 (i) appoint an independent trustee for
22 the transaction; and

23 (ii) require that the independent
24 trustee obtain a fairness opinion from an
25 independent financial advisor, which shall

1 evaluate whether the price, terms, and cost
2 of financing of the proposed covered invest-
3 ment are financially fair to the employee
4 stock ownership plan; and

5 (B) the employee stock ownership plan re-
6 quires that—

7 (i) in addition to the corporate mat-
8 ters listed in section 409(e)(3) of the In-
9 ternal Revenue Code of 1986, each partici-
10 pant or beneficiary in the employee stock
11 ownership plan is entitled to direct the em-
12 ployee stock ownership plan as to the man-
13 ner in which voting rights under securities
14 of the employer which are allocated to the
15 account of such participant or beneficiary
16 are to be exercised with respect to the ap-
17 proval or disapproval of any stock sale;

18 (ii) the requirements of section
19 409(e)(3) of the Internal Revenue Code of
20 1986 and clause (i) of this subparagraph
21 shall be met using the procedures de-
22 scribed in section 409(e)(5) of the Internal
23 Revenue Code of 1986;

24 (iii) unless the parties agree other-
25 wise, with respect to unallocated shares,

1 the independent trustee shall be directed to
2 vote or tender such unallocated shares in
3 the same proportion as allocated shares for
4 which the independent trustee has received
5 voting or tender instructions from partici-
6 pants in the employee stock ownership
7 plan; and

8 (iv) with respect to allocated shares
9 that the independent trustee does not re-
10 ceive voting or tender instructions from
11 participants in the employee stock owner-
12 ship plan, the independent trustee shall
13 have voting discretion over such shares.

14 (2) VOTING DISCRETION.—Nothing in para-
15 graph (1)(B) shall limit the ability of an inde-
16 pendent trustee to exercise voting discretion in ac-
17 cordance with the fiduciary obligations of the inde-
18 pendent trustee under the Employee Retirement In-
19 come Security Act of 1974 (29 U.S.C. 1001 et seq.).

20 (3) LIMITATION.—The requirements under
21 paragraph (1) shall apply only with respect to the
22 period during which the ownership investment com-
23 pany has an interest in the covered business con-
24 cern.

1 (k) REPORTS.—Each ownership investment company
2 (including Protégé OICs) shall submit to the Secretary an
3 annual report, which shall include, for the year covered
4 by the report, the following information, disaggregated by
5 type of covered investment as described in subparagraph
6 (A) or (B) of section 2(6), as applicable:

7 (1) Whether the covered investment was made
8 with respect to an employee stock ownership plan or
9 eligible worker-owned cooperative.

10 (2) For an employee stock ownership plan—

11 (A) the effective date of the employee stock
12 ownership plan;

13 (B) the number of active employee stock
14 ownership plan participants;

15 (C) the number of employees of the cov-
16 ered business concern for which the employee
17 stock ownership plan is established;

18 (D) the total value of employer securities,
19 as determined by an independent appraiser
20 hired by the independent trustee of the em-
21 ployee stock ownership plan;

22 (E) the total employee stock ownership
23 plan assets;

24 (F) the total contributions during the em-
25 ployee stock ownership plan year;

1 (G) the total distributions during the em-
2 ployee stock ownership plan year;

3 (H) the median account asset balance; and

4 (I) demographic information of employee
5 stock ownership plan participants,
6 disaggregated by race, gender, and State, to the
7 extent available.

8 (3) For an eligible worker-owned cooperative—

9 (A) the number of member-owners;

10 (B) the number of employees of the cov-
11 ered business concern for which the eligible
12 worker-owned cooperative is established;

13 (C) the total value of employer securities;

14 (D) the aggregate assets of all membership
15 accounts of the eligible worker-owned coopera-
16 tive;

17 (E) the median membership account bal-
18 ance; and

19 (F) demographic information of member-
20 ship base, disaggregated by race, gender, and
21 State, to the extent available.

22 (l) IMPLEMENTATION MILESTONES.—

23 (1) IN GENERAL.—Not later than 540 days
24 after the date of enactment of this Act, the Sec-
25 retary shall begin accepting applications to be li-

1 censed to participate in the facility as an ownership
2 investment company.

3 (2) LICENSE TIMELINE.—Not later than 2
4 years after the date of enactment of this Act, the
5 Secretary shall approve the first tranche of licenses
6 to participate in the facility as an ownership invest-
7 ment company with respect to applicants that satisfy
8 the applicable eligibility criteria.

9 (m) SUNSET.—

10 (1) DEFINITION.—In this subsection, the term
11 “sunset date” means the first day of the 20th cal-
12 endar year that begins after the date on which the
13 Secretary approves the first license to participate in
14 the facility as an ownership investment company (in-
15 cluding as a Protégé OIC).

16 (2) TERMINATION OF AUTHORITY.—On and
17 after the sunset date, the Secretary may not license
18 an entity to participate in the facility as an owner-
19 ship investment company (including as a Protégé
20 OIC).

21 (3) CONTINUED PARTICIPATION BY EXISTING
22 ENTITIES.—Nothing in paragraph (2) shall be con-
23 strued to prohibit an ownership investment company
24 (including a Protégé OIC) from continuing to draw
25 leverage on and after the sunset date that was com-

1 mitted to the entity through the facility before the
2 sunset date.

3 (4) APPLICATION.—The Secretary shall not
4 consider paragraph (2) as a factor in the decision to
5 license an entity to participate in the facility as an
6 ownership investment company (including as a
7 Protégé OIC) before the sunset date.

8 **SEC. 4. ORGANIZATION OF OWNERSHIP INVESTMENT COM-**
9 **PANIES.**

10 (a) IN GENERAL.—

11 (1) REQUIREMENT.—An ownership investment
12 company shall be an incorporated body, a limited li-
13 ability company, or a limited partnership organized
14 and chartered or otherwise existing under State law
15 solely for the purpose of performing the functions
16 and conducting the activities contemplated under
17 this Act, which—

18 (A) if incorporated, has succession for a
19 period of not fewer than 30 years unless sooner
20 dissolved by its shareholders; or

21 (B) if a limited partnership, has succession
22 for a period of not fewer than 10 years, and
23 possesses the powers reasonably necessary to
24 perform such functions and conduct such activi-
25 ties.

1 (2) AREA OF OPERATION.—The area in which
2 an ownership investment company described in para-
3 graph (1) is to conduct its operations, and the estab-
4 lishment of branch offices or agencies (if authorized
5 by the articles), shall be subject to the approval of
6 the Department.

7 (b) ARTICLES.—

8 (1) REQUIREMENTS.—The articles of any own-
9 ership investment company shall specify —

10 (A) the objects for which the company is
11 formed in general terms;

12 (B) the name assumed by the ownership
13 investment company;

14 (C) the area or areas in which the oper-
15 ations of the ownership investment company are
16 to be carried on;

17 (D) the place where the principal office of
18 the ownership investment company is to be lo-
19 cated; and

20 (E) the amount and classes of the shares
21 of capital stock of the ownership investment
22 company.

23 (2) INCLUSIONS.—Articles of an ownership in-
24 vestment company may contain any other provisions
25 not inconsistent with this Act that the ownership in-

1 vestment company may see fit to adopt for the regu-
2 lation of the business of the ownership investment
3 company and the conduct of the affairs of the own-
4 ership investment company.

5 (3) APPROVAL.—Articles of an ownership in-
6 vestment company and any amendments thereto
7 adopted from time to time shall be subject to the ap-
8 proval of the Secretary.

9 (c) ISSUANCE OF LICENSE.—

10 (1) SUBMISSION OF APPLICATION.—

11 (A) IN GENERAL.—Each applicant to oper-
12 ate as an ownership investment company (in-
13 cluding a Protégé OIC) under this Act shall
14 submit to the Secretary an application, in a
15 form and including such documentation as may
16 be prescribed by the Secretary.

17 (B) ROLLING BASIS.—The Secretary shall
18 accept applications under subparagraph (A) on
19 a rolling basis.

20 (C) ELECTRONIC SUBMISSIONS.—The Sec-
21 retary shall allow an applicant under this sub-
22 section to electronically submit any document
23 required by this subsection and to provide an
24 electronic signature for any signature that is re-
25 quired on such a document.

1 (2) PROCEDURES.—

2 (A) STATUS.—Not later than 90 days after
3 the initial receipt by the Secretary of an appli-
4 cation under this subsection, the Secretary shall
5 provide the applicant with a written report de-
6 tailing the status of the application and any re-
7 quirements remaining for completion of the ap-
8 plication.

9 (B) APPROVAL OR DISAPPROVAL.—Within
10 90 days after receiving a completed application
11 submitted in accordance with this subsection
12 and in accordance with such requirements as
13 the Secretary may prescribe by regulation, the
14 Secretary shall—

15 (i) approve the application and issue a
16 license for such operation to the applicant
17 if the requirements of this section are sat-
18 isfied; or

19 (ii) disapprove the application and no-
20 tify the applicant in writing of the dis-
21 approval.

22 (3) MATTERS CONSIDERED.—

23 (A) IN GENERAL.—In reviewing and proc-
24 essing any application under this subsection,
25 the Secretary—

1 (i) shall determine whether—

2 (I) the applicant meets the re-
3 quirements of subsections (a) and (b)
4 of section 6; and

5 (II) the management of the ap-
6 plicant is qualified and has the knowl-
7 edge, experience, and capability nec-
8 essary to comply with this Act;

9 (ii) shall take into consideration—

10 (I) the need for and availability
11 of financing for a covered business
12 concerns in the geographic area in
13 which the applicant is to commence
14 business;

15 (II) the general business reputa-
16 tion of the owners and management of
17 the applicant; and

18 (III) the probability of successful
19 operations of the applicant, including
20 adequate profitability and financial
21 soundness; and

22 (iii) shall not take into consideration
23 any projected shortage or unavailability of
24 leverage.

1 (B) ADDITIONAL MATTERS CONSIDERED
2 FOR OWNERSHIP INVESTMENT COMPANIES.—

3 (i) INVESTMENT TRACK RECORD.—

4 Except as provided in clause (ii), an appli-
5 cant for a license to operate as an owner-
6 ship investment company shall submit to
7 the Secretary proof that the managers of
8 the applicant have a track record of man-
9 aging investments, including structured in-
10 vestments, realized or unrealized, in an
11 employee stock ownership plan or eligible
12 worker-owned cooperative.

13 (ii) ADVISORY REQUIREMENT.—An
14 applicant that does not have an investment
15 track record described in clause (i) or that
16 is a Protégé OIC shall submit to the Sec-
17 retary evidence that the applicant has re-
18 tained or will retain a legal, accounting, or
19 financial advisory firm with not fewer than
20 5 years of experience in structuring em-
21 ployee stock ownership plans or eligible
22 worker-owned cooperatives.

23 (iii) LIMITATION.—The Secretary may
24 not reject an applicant for a license to op-
25 erate as an ownership investment company

1 solely because the applicant lacks a suffi-
2 cient track record in realized investments
3 if the applicant demonstrates an otherwise
4 successful investment track record that in-
5 cludes unrealized covered investments.

6 (C) PROVISIONAL APPROVAL.—

7 (i) IN GENERAL.—The Secretary may
8 provide provisional approval for a license
9 to participate in the facility as an owner-
10 ship investment company (including a
11 Protégé OIC) for a period not to exceed 1
12 year to an investment firm submitting an
13 application under this subsection or—

14 (I) that does not meet the min-
15 imum private capital requirements
16 under section 6(a) necessary for li-
17 censing under this subsection at the
18 time of application;

19 (II) that states an intent to more
20 effectively raise capital commitments
21 in private markets with a license; and

22 (III) that states an intent to
23 more precisely request the desired
24 amount of leverage contingent on se-

1 curing capital from private market in-
2 vestors.

3 (ii) CAPITAL REQUIREMENTS.—An
4 applicant granted provisional approval
5 under clause (i) shall not be eligible to re-
6 ceive leverage until the applicant satisfies
7 the requirements of section 6(a).

8 (D) FEES.—

9 (i) IN GENERAL.—The Secretary may
10 prescribe fees to be paid by each applicant
11 for a license to operate as an ownership in-
12 vestment company (including a Protégé
13 OIC) under this Act.

14 (ii) USE OF AMOUNTS.—Fees col-
15 lected under this subparagraph—

16 (I) shall be deposited in the ac-
17 count for salaries and expenses of the
18 Department; and

19 (II) are authorized to be appro-
20 priated solely to cover the costs of li-
21 censing examinations.

22 (d) 1940 AND 1980 ACT COMPANIES.—

23 (1) IN GENERAL.—

1 (A) APPLICATION.—A 1940 Act Company
2 or 1980 Act Company is eligible to apply for a
3 license under this Act.

4 (B) ELIGIBILITY OF LICENSEES.—A li-
5 censee that is not registered as a 1940 Act
6 Company or 1980 Act Company is eligible to
7 apply for approval from the Secretary to con-
8 vert to a 1940 Act Company or 1980 Act Com-
9 pany.

10 (2) REGULATION.—A 1940 Act Company or
11 1980 Act Company that is a licensee may elect to
12 be taxed as a regulated investment company for pur-
13 poses of section 851 of the Internal Revenue Code
14 of 1986 (26 U.S.C. 851), provided that the licensee
15 making such election may make distributions only as
16 permitted under the applicable guidance or regula-
17 tions that the Secretary may prescribe.

18 **SEC. 5. PROTÉGÉ OIC PROGRAM.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
20 a program to be known as the “Protégé OIC Program”
21 under which a manager of an ownership investment com-
22 pany that is not a Protégé OIC may enter into a written
23 agreement approved by the Secretary to provide guidance
24 and assistance to a Protégé OIC with respect to—

1 (1) applying for a license for the Protégé OIC
2 to operate as an ownership investment company; and

3 (2) management of the ownership investment
4 company after licensure.

5 (b) APPLICATION.—After entering into a written
6 agreement described in subsection (a), the Protégé OIC
7 shall apply for a license under section 4(c).

8 (c) SELECTION.—The Secretary may grant a license
9 to a Protégé OIC to operate as an ownership investment
10 company under section 4(c) based on the investment track
11 record of 1 or more of the managers that have entered
12 into a written agreement described in subsection (a) of
13 this section with the applicant Protégé OIC.

14 (d) REQUIREMENTS FOR MANAGERS.—If a manager
15 enters into a written agreement described in subsection
16 (a)—

17 (1) the manager may hold a minority financial
18 interest in the ownership investment company that is
19 to be managed by the Protégé OIC;

20 (2) the otherwise applicable maximum amount
21 of outstanding leverage that may be made available
22 to any 1 licensed company of the manager under
23 section 7(b)(6)(B)(i)(I) shall be increased by
24 \$17,500,000; and

1 (3) the otherwise applicable maximum amount
2 of outstanding leverage that may be made available
3 to any 2 or more licensed companies that are com-
4 monly controlled by the manager under section
5 7(b)(6)(B)(i)(II) shall be increased by \$35,000,000.

6 **SEC. 6. CAPITAL REQUIREMENTS.**

7 (a) AMOUNT.—

8 (1) IN GENERAL.—The private capital of each
9 licensee shall be not less than \$10,000,000.

10 (2) ADEQUACY.—In addition to the requirement
11 under paragraph (1), the Secretary shall—

12 (A) determine whether the private capital
13 of each licensee is adequate to assure a reason-
14 able prospect that the licensee will be operated
15 soundly and profitably, and managed actively
16 and prudently in accordance with the articles of
17 the licensee; and

18 (B) determine whether the licensee will be
19 able, both prior to licensing and prior to ap-
20 proving any request for financing, to make peri-
21 odic payments on any debt of the licensee that
22 is interest bearing and shall take into consider-
23 ation the income that the licensee anticipates on
24 the contemplated investments of the licensee,
25 the experience of the owners and managers of

1 the licensee, the history of the licensee as an
2 entity, if any, and the financial resources of the
3 licensee.

4 (b) **DIVERSIFICATION OF OWNERSHIP.**—The Sec-
5 retary shall ensure that the management of each licensee
6 (including Protégé OICs) is sufficiently diversified from
7 and unaffiliated with the ownership of the licensee in a
8 manner that ensures independence and objectivity in the
9 financial management and oversight of the investments
10 and operations of the licensee.

11 **SEC. 7. BORROWING POWER.**

12 (a) **IN GENERAL.**—Each ownership investment com-
13 pany shall have authority to borrow money and to issue
14 its securities, promissory notes, or other obligations under
15 such general conditions and subject to such limitations
16 and regulations as the Secretary may prescribe.

17 (b) **AUTHORITY TO GUARANTEE.**—

18 (1) **GRANT OF AUTHORITY.**—To encourage the
19 formation and growth of ownership investment com-
20 panies the Secretary may, when authorized in appro-
21 priation Acts, guarantee the timely payment of all
22 principal and interest as scheduled on debentures
23 issued by ownership investment companies.

24 (2) **TERMS AND CONDITIONS.**—Guarantees
25 made under paragraph (1) may be made by the Sec-

1 retary on such terms and conditions as the Secretary
2 deems appropriate, pursuant to regulations issued by
3 the Secretary.

4 (3) FULL FAITH AND CREDIT.—The full faith
5 and credit of the United States is pledged to the
6 payment of all amounts that may be required to be
7 paid under any guarantee under this subsection.

8 (4) STATUS OF DEBENTURES.—Debentures
9 guaranteed by the Department under this subsection
10 shall be subordinate to any other debenture bonds,
11 promissory notes, or other debts and obligations of
12 an ownership investment company, unless the Sec-
13 retary, in the exercise of reasonable investment pru-
14 dence and in considering the financial soundness of
15 such ownership investment company, determines
16 otherwise.

17 (5) TERM AND INTEREST RATE.—A debenture
18 issued under this subsection may be issued for a
19 term of not to exceed 15 years and shall bear inter-
20 est at a rate not less than a rate determined by the
21 Secretary of the Treasury, taking into consideration
22 the current average market yield on outstanding
23 marketable obligations of the United States with re-
24 maining periods to maturity comparable to the aver-
25 age maturities on such debentures, adjusted to the

1 nearest $\frac{1}{8}$ of 1 per centum, plus an additional
2 charge, in an amount established annually by the
3 Secretary, as necessary to reduce to 0 the cost (as
4 defined in section 502 of the Federal Credit Reform
5 Act of 1990 (2 U.S.C. 661a)) to the Department
6 guaranteeing debentures under this Act, which
7 amount may not exceed 1.38 percent per year, and
8 which shall be paid to and retained by the Depart-
9 ment.

10 (6) ADDITIONAL RESTRICTIONS AND LIMITA-
11 TIONS.—A debenture issued under this subsection—

12 (A) shall include such other terms as the
13 Department may fix; and

14 (B) shall be subject to the following re-
15 strictions and limitations:

16 (i)(I) The maximum amount of out-
17 standing leverage made available to any 1
18 ownership investment company licensed
19 under section 4(c) that is not a Protégé
20 OIC may not exceed the lesser of—

21 (aa) 100 percent of the private
22 capital of such company; or

23 (bb) \$500,000,000.

24 (II) The maximum amount of out-
25 standing leverage made available to 2 or

1 more ownership investment companies li-
2 censed under section 4(c) that are com-
3 monly controlled (as determined by the
4 Secretary) and not under capital impair-
5 ment may not exceed \$1,000,000,000.

6 (ii) A Protégé OIC may not have mul-
7 tiple licenses under common control.

8 (iii) The maximum amount of out-
9 standing leverage made available under the
10 facility established under section 3 to any
11 Protégé OIC may not to exceed the less-
12 er of—

13 (I) 100 percent of the private
14 capital of the Protégé OIC; or

15 (II) \$100,000,000.

16 (iv)(I) In calculating the outstanding
17 leverage of a company for the purposes of
18 subclauses (I) and (II) of clause (i), the
19 Secretary shall not include the amount of
20 the cost basis of any covered investment
21 made by the ownership investment com-
22 pany in a covered business concern that—

23 (aa) conducts in the United
24 States research and development, en-

1 gineering, or production activities nec-
2 essary or incidental to manufacturing;

3 (bb) operates in a critical indus-
4 try or critical technology area identi-
5 fied by the Secretary to be vital to
6 maintaining the national or economic
7 security of the United States; and

8 (cc) is headquartered in the
9 United States, or will be
10 headquartered in the United States
11 immediately following the transaction
12 in the case of a covered investment
13 described in section 2(6)(A).

14 (II) The exclusion of amounts in sub-
15 clause (I) shall not exceed a total of
16 \$75,000,000 or 25 percent of private cap-
17 ital of such company, whichever is less.

18 (III) Subclause (I) shall not apply to
19 any Protégé OIC.

20 (v) Nothing in this paragraph shall
21 prevent licensees with 1 or more small
22 business investment companies licensed
23 under section 301(c) of the Small Business
24 Investment Act of 1958 (15 U.S.C. 681)
25 under common control (as determined by

1 the Secretary), including licensees whose
2 small business investment companies have
3 received the maximum amount of leverage
4 in sections 303(b)(2)(A) or 303(b)(2)(B)
5 of that Act, from receiving the maximum
6 amount of leverage in clause (i).

7 (c) **THIRD PARTY DEBT.**—The Secretary—

8 (1) may not permit a licensee having out-
9 standing leverage to incur third party debt that
10 would create or contribute to an unreasonable risk
11 of default or loss to the Federal Government; and

12 (2) shall permit any licensee to incur third
13 party debt only on such terms and subject to such
14 conditions as may be established by the Secretary,
15 by regulation or otherwise.

16 (d) **CAPITAL IMPAIRMENT.**—Before approving any
17 application for leverage submitted by a licensee under this
18 Act, the Secretary—

19 (1) shall determine that the private capital of
20 the licensee meets the requirements of section 6(a);
21 and

22 (2) shall determine, taking into account the na-
23 ture of the assets of the licensee, the amount and
24 terms of any third party debt owed by such licensee,
25 and any other factors determined to be relevant by

1 the Secretary, that the private capital of the licensee
2 has not been impaired to such an extent that the
3 issuance of additional leverage would create or oth-
4 erwise contribute to an unreasonable risk of default
5 or loss to the Federal Government.

6 (e) LEVERAGE FEE.—With respect to leverage grant-
7 ed by the Department to a licensee, the Department shall
8 collect from the licensee a nonrefundable fee in an amount
9 equal to 3 percent of the face amount of leverage granted
10 to the licensee in the following manner:

11 (1) One percent upon the date on which the De-
12 partment enters into any commitment for such lever-
13 age with the licensee.

14 (2) The balance of 2 percent (or 3 percent if no
15 commitment has been entered into by the Depart-
16 ment) on the date on which the leverage is drawn by
17 the licensee.

18 (f) CALCULATION OF SUBSIDY RATE.—All fees and
19 interest received and retained by the Department under
20 this section shall be included in the calculations made by
21 the Director of the Office of Management and Budget to
22 offset the cost (as that term is defined in section 502 of
23 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))
24 to the Department of guaranteeing debentures under this
25 Act.

1 **SEC. 8. PROVISION OF INVESTMENT CAPITAL FOR COV-**
2 **ERED BUSINESS CONCERNS.**

3 (a) IN GENERAL.—Each ownership investment com-
4 pany shall provide a source of debt, synthetic equity, pre-
5 ferred stock, or equity capital, or a combination thereof,
6 for incorporated and unincorporated covered business con-
7 cerns, in such manner and under such terms as the owner-
8 ship investment company may fix in accordance with the
9 regulations established by the Department.

10 (b) REQUIREMENT.—Before any capital described in
11 subsection (a) is provided to a covered business concern
12 under this section—

13 (1) the ownership investment company may re-
14 quire a covered business concern to refinance any or
15 all of the outstanding indebtedness of the covered
16 business concern so that the ownership investment
17 company is the only holder of any evidence of in-
18 debtedness of the covered business concern; and

19 (2) except as provided in regulations issued by
20 the Secretary, such the covered business concern
21 shall agree that the covered business concern will
22 not thereafter incur any indebtedness without first
23 securing the approval of the ownership investment
24 company and giving the ownership investment com-
25 pany the first opportunity to finance such indebted-
26 ness.

1 (c) THIRD PARTY INVESTORS.—Investment capital
2 provided to covered business concerns under this section
3 may be provided directly or in cooperation with other in-
4 vestors, incorporated or unincorporated, through agree-
5 ments to participate on an immediate or deferred basis.

6 (d) INTEREST.—The maximum rate of interest for
7 the share of an ownership investment company of any loan
8 made under this section shall be determined by the Sec-
9 retary—

10 (1) provided that the Department also shall
11 permit those ownership investment companies that
12 have issued debentures pursuant to this Act to
13 charge a maximum rate of interest based upon the
14 coupon rate of interest on the outstanding deben-
15 tures, determined on an annual basis, plus such
16 other expenses of the ownership investment company
17 as may be approved by the Department; and

18 (2) in making the initial determinations on the
19 maximum rate of interest under this subsection fol-
20 lowing the enactment of this Act, the Secretary shall
21 consult the regulations promulgated by the Adminis-
22 trator of the Small Business Administration on the
23 maximum rate of interest for loans and debt securi-
24 ties in accordance with section 305 of the Small
25 Business Investment Act of 1958 (15 U.S.C. 685) .

1 (e) MATURITY.—

2 (1) IN GENERAL.—Any loan made under this
3 section shall have a maturity not exceeding 20 years.

4 (2) EXTENSION OR RENEWAL.—Any ownership
5 investment company that makes a loan to a covered
6 business concern under this section is authorized to
7 extend the maturity of or renew such loan for addi-
8 tional periods, not exceeding 10 years, if the owner-
9 ship investment company finds that such extension
10 or renewal will aid in the orderly liquidation of such
11 loan.

12 (f) REPAYMENT.—Any loan made under this section
13 shall be of such sound value, or so secured, as reasonably
14 to assure repayment.

15 **SEC. 9. PORTFOLIO DIVERSIFICATION.**

16 If any ownership investment company obtains financ-
17 ing from the Secretary under this Act and such financing
18 remains outstanding, the aggregate amount of securities
19 acquired and for which commitments may be issued by
20 the ownership investment company under this Act for any
21 single covered business concern shall not, without the ap-
22 proval of the Secretary, exceed 10 percent of the sum of—

23 (1) the private capital of such company; and

24 (2) the total amount of leverage projected by
25 the ownership investment company in the business

1 plan of the ownership investment company that was
2 approved by the Secretary at the time of the grant
3 of the license of the ownership investment company.

4 **SEC. 10. EXEMPTIONS.**

5 (a) SECURITIES ACT OF 1933.—Notwithstanding the
6 provisions of title I of the Securities Act of 1933 (15
7 U.S.C. 77a et seq.), the Securities and Exchange Commis-
8 sion may from time to time by the rules and regulations
9 of the Securities and Exchange Commission, and subject
10 to such terms and conditions as may be prescribed under
11 section 3 of the Securities Act of 1933 (15 U.S.C. 77c),
12 add to the securities exempted as provided in section 3
13 of that Act any class of securities issued by an ownership
14 investment company under this Act if the Securities and
15 Exchange Commission finds, having regard to the pur-
16 poses of the Securities Act of 1933 (15 U.S.C. 77a et
17 seq.), that the enforcement of title I of the Securities Act
18 of 1933 (15 U.S.C. 77a et seq.), with respect to such secu-
19 rities, is not necessary in the public interest and for the
20 protection of investors.

21 (b) TRUST INDENTURE ACT OF 1939.—Notwith-
22 standing the provisions of title III of the Trust Indenture
23 Act of 1939 (15 U.S.C. 77aaa et seq.), the Securities and
24 Exchange Commission may from time to time by the rules
25 and regulations of the Securities and Exchange Commis-

1 sion, and subject to such terms and conditions as may be
2 prescribed under section 304 of the Trust Indenture Act
3 of 1939 (15 U.S.C. 77ddd), add to the securities exempted
4 as provided in section 304 of that Act any class of securi-
5 ties issued by an ownership investment company under
6 this Act if the Securities and Exchange Commission finds,
7 having regard to the purposes of the Trust Indenture Act
8 of 1939 (15 U.S.C. 77aaa et seq.), that the enforcement
9 of title III of the Trust Indenture Act of 1939 (15 U.S.C.
10 77aaa et seq.), with respect to such securities is not nec-
11 essary in the public interest and for the protection of in-
12 vestors.

13 (c) INVESTMENT COMPANY ACT OF 1940.—Notwith-
14 standing the provisions of section 18 of the Investment
15 Company Act of 1940 (15 U.S.C. 80a–18), the provisions
16 of subparagraphs (A) and (B) of subsection (a)(1) of that
17 section shall not apply to any ownership investment com-
18 pany operating under this Act, provided that such class
19 of senior security shall be guaranteed by the Department.

20 **SEC. 11. LEVERAGE REQUIREMENTS.**

21 No leverage shall be committed by the Department
22 under this Act to any licensee unless the managers of such
23 licensee—

24 (1) certify to the Department the names of any
25 attorneys, agents, or other persons engaged by or on

1 behalf of such licensee for the purpose of expediting
2 applications made to the Department for assistance
3 of any sort, and the fees paid or to be paid to any
4 such persons; and

5 (2) executes an agreement binding any such li-
6 censee for a period of 2 years after any assistance
7 is rendered by the Department to such licensee, to
8 refrain from employing, tendering any office or em-
9 ployment to, or retaining for professional services,
10 any person who, on the date such assistance or any
11 part thereof was rendered, or within the 1 year pe-
12 riod prior thereto, shall have served as an officer, at-
13 torney, agent, or employee of the Department occu-
14 pying a position or engaging in activities which the
15 department shall have determined involve discretion
16 with respect to the granting of assistance under this
17 Act.

18 **SEC. 12. REPORTING.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, and each year thereafter,
21 the Secretary shall submit to Congress a full and detailed
22 account of the operations of the Department under this
23 Act, including the amount of losses sustained by the Gov-
24 ernment as a result of such operations during the pre-
25 ceding fiscal year, together with an estimate of the total

1 losses that the Government can reasonably expect to incur
2 as a result of such operations during the current fiscal
3 year.

4 (b) CONTENTS.—In the annual report submitted pur-
5 suant to subsection (a), the Secretary shall include full
6 and detailed accounts relative to the following matters:

7 (1) The plans of the Department to insure the
8 provision of ownership investment company financ-
9 ing and licensing to all areas of the country and to
10 all covered business concerns, including steps taken
11 to accomplish the same.

12 (2) The plans of the Department to support
13 States that seek to increase the number of licensees
14 in the State.

15 (3) Steps taken by the Department to maximize
16 recoupment of Government funds incident to the in-
17 auguration and administration of the ownership in-
18 vestment company program and to insure compli-
19 ance with statutory and regulatory standards relat-
20 ing to the ownership investment company program.

21 (4) Recommendations to the Department of the
22 Treasury with respect to additional tax incentives to
23 improve and facilitate the operations of ownership
24 investment companies and to encourage the use of

1 the financing facilities of ownership investment com-
2 panies by covered business concerns.

3 (5) A report from the Securities and Exchange
4 Commission enumerating actions undertaken by the
5 Securities and Exchange Commission to—

6 (A) simplify and minimize the regulatory
7 requirements governing ownership investment
8 companies under the Federal securities laws;
9 and

10 (B) eliminate overlapping regulation and
11 jurisdiction as between the Securities and Ex-
12 change Commission, the Department, and other
13 agencies of the executive branch.

14 (6) Actions undertaken by the Securities and
15 Exchange Commission to simplify compliance by
16 ownership investment companies with the require-
17 ments of the Investment Company Act of 1940 and
18 to facilitate the election to be taxed as regulated in-
19 vestment companies pursuant to section 851 of the
20 Internal Revenue Code of 1954.

21 (7) The number of ownership investment com-
22 panies the Department licensed (including Protégé
23 OICs), the number of licensees that have been
24 placed in liquidation, and the number of licensees
25 that have surrendered their licenses during the year

1 ending on the date the report is submitted, identi-
2 fying the amount of leverage each received during
3 that period.

4 (8) The amount of leverage that ownership in-
5 vestment companies (including Protégé OICs) re-
6 ceived during the year ending on the date the report
7 is submitted.

8 (9) The sizes, geographic locations, and other
9 characteristics of licensed ownership investment
10 companies (including Protégé OICs), including the
11 extent to which the ownership investment companies
12 have used the leverage to make debt, synthetic eq-
13 uity, preferred equity, or equity investments, or a
14 combination thereof, to covered business concerns.

15 (10) The geographic dispersion of licensees in
16 each State compared to the population of the State.

17 (11) A summary of employee stock ownership
18 plans created by an ownership investment company
19 (including Protégé OICs), including—

20 (A) the total number of active plan partici-
21 pants;

22 (B) the total number of employees of the
23 covered business concerns with such employee
24 stock ownership plans;

1 (C) the total value of employer securities,
2 as determined by the independent appraisers
3 hired by the independent trustee of each em-
4 ployee stock ownership plan;

5 (D) the total plan assets;

6 (E) the total contributions during the plan
7 year;

8 (F) the total distributions during the plan
9 year;

10 (G) the median account asset balance; and

11 (H) demographic information of plan par-
12 ticipants, disaggregated by race, gender, and
13 State, to the extent available.

14 (12) A summary of eligible worker-owned co-
15 operatives created by ownership investment compa-
16 nies (including Protégé OICs), including—

17 (A) the number of member-owners;

18 (B) the total number of employees of the
19 covered business concern with such eligible
20 worker-owned cooperatives;

21 (C) the total value of employer securities;

22 (D) the assets of all membership accounts;

23 (E) the median membership account bal-
24 ance; and

1 (F) demographic information of member-
2 ship base, disaggregated by race, gender, and
3 State, to the extent available.

4 **SEC. 13. REVOCATION AND SUSPENSION OF LICENSES;**
5 **CEASE AND DESIST ORDERS.**

6 (a) IN GENERAL.—A license may be revoked or sus-
7 pended by the Secretary—

8 (1) for any false statement knowingly made in
9 any written statement required under this Act, or
10 under any regulation issued under this Act by the
11 Secretary;

12 (2) if any written statement required under this
13 Act, or under any regulation issued under this Act
14 by the Secretary, fails to state a material fact nec-
15 essary in order to make the statement not mis-
16 leading in the light of the circumstances under
17 which the statement was made;

18 (3) for willful or repeated violation, or willful or
19 repeated failure to observe, any provision of this Act;

20 (4) for willful or repeated violation of, or willful
21 or repeated failure to observe, any rule or regulation
22 issued under this Act by the Secretary; or

23 (5) for violation of, or failure to observe, any
24 cease and desist order issued by the Secretary under
25 this section.

1 (b) ORDER TO CEASE AND DESIST.—

2 (1) ISSUANCE.—Where a licensee or any other
3 person has not complied with any provision of this
4 Act, or of any regulation issued under this Act by
5 the Secretary, or is engaging or is about to engage
6 in any acts or practices that constitute or will con-
7 stitute a violation of such Act or regulation, the Sec-
8 retary may order such licensee or other person to
9 cease and desist from such action or failure to act.

10 (2) ACTIONS REQUIRED.—The Secretary may
11 order such licensee or other person to take such ac-
12 tion or to refrain from such action as the Secretary
13 deems necessary to insure compliance with the Act
14 and the regulations implementing this Act.

15 (3) SUSPENSION OF LICENSES.—The Secretary
16 may also suspend the license of a licensee against
17 whom an order has been issued until such licensee
18 complies with an order issued under this subsection.

19 (c) ORDERS TO SHOW CAUSE.—

20 (1) ISSUANCE.—Before revoking or suspending
21 a license pursuant to subsection (a) or issuing a
22 cease and desist order pursuant to subsection (b),
23 the Secretary shall serve upon the licensee and any
24 other person involved an order to show cause why an

1 order revoking or suspending the license or a cease
2 and desist order should not be issued.

3 (2) CONTENTS.—Any order to show cause
4 issued under paragraph (1) shall—

5 (A) contain a statement of the matters of
6 fact and law asserted by the Department and
7 the legal authority and jurisdiction under which
8 a hearing is to be held; and

9 (B) set forth that a hearing will be held
10 before the Department at a time and place stat-
11 ed in the order.

12 (3) STATEMENT OF FINDINGS.—If after hear-
13 ing, or a waiver thereof, the Secretary determines on
14 the record that an order revoking or suspending the
15 license or a cease and desist order should issue, the
16 Secretary shall—

17 (A) promptly issue such order, which shall
18 include a statement of the findings of the Sec-
19 retary and the grounds and reasons therefor
20 and specify the effective date of the order; and

21 (B) cause the order to be served on the li-
22 censee and any other person involved.

23 (d) WITNESSES.—

24 (1) SUBPOENA AUTHORITY.—The Secretary
25 may require by subpoena the attendance and testi-

1 mony of witnesses and the production of all books,
2 papers, and documents relating to the hearing from
3 any place in the United States.

4 (2) PAYMENT.—Any witness summoned before
5 the Department shall be paid by the party at whose
6 instance the witness was called the same fees and
7 mileage that are paid witnesses in the courts of the
8 United States.

9 (3) AID OF THE COURT.—In case of disobe-
10 dience to a subpoena, the Secretary, or any party to
11 a proceeding before the Department, may invoke the
12 aid of any court of the United States in requiring
13 the attendance and testimony of witnesses and the
14 production of books, papers, and documents.

15 (e) APPEALS.—

16 (1) FILING.—

17 (A) IN GENERAL.—An order issued by the
18 Secretary under this section shall be final and
19 conclusive unless within 30 days after the serv-
20 ice thereof the licensee, or other person against
21 whom an order is issued, appeals to the United
22 States court of appeals for the circuit in which
23 such licensee has its principal place of business
24 by filing with the clerk of such court a petition
25 praying that the Department's order be set

1 aside or modified in the manner stated in the
2 petition.

3 (B) LEAVE REQUIRED.—After the expira-
4 tion of the 30-day period described in subpara-
5 graph (A), a petition may be filed only by leave
6 of court on a showing of reasonable grounds for
7 failure to file the petition theretofore.

8 (2) DELIVERY.—The clerk of the court shall
9 immediately cause a copy of the petition described in
10 paragraph (1) to be delivered to the Secretary, and,
11 upon receipt, the Secretary shall certify and file in
12 the court a transcript of the record upon which the
13 order complained of was entered.

14 (3) AMENDING PETITION.—If, before the record
15 is filed under paragraph (2), the Secretary amends
16 or sets aside its order, in whole or in part, the peti-
17 tioner may amend the petition within such time as
18 the court may determine, on notice to the Secretary.

19 (4) OPERATION OF ORDER.—The filing of a pe-
20 tition for review under this subsection shall not of
21 itself stay or suspend the operation of the order of
22 the Department, but the court of appeals in its dis-
23 cretion may restrain or suspend, in whole or in part,
24 the operation of the order pending the final hearing
25 and determination of the petition.

1 (5) DISPOSITION.—

2 (A) IN GENERAL.—The court may affirm,
3 modify, or set aside the order of the Secretary
4 under this section.

5 (B) EVIDENCE.—If the court determines
6 that the just and proper disposition of the case
7 requires the taking of additional evidence, the
8 court shall order the Secretary to reopen the
9 hearing for the taking of such evidence, in such
10 manner and upon such terms and conditions as
11 the court may deem proper.

12 (C) FINDINGS OF FACT.—The Secretary—

13 (i) may modify the findings as to the
14 facts of the Department, or make new
15 findings, by reason of the additional evi-
16 dence so taken; and

17 (ii) shall file modified or new findings
18 and the amendments, if any, of the order,
19 with the record of such additional evidence.

20 (D) OBJECTIONS.—No objection to an
21 order of the Secretary shall be considered by
22 the court unless such objection was urged be-
23 fore the Department or, if it was not so urged,
24 unless there were reasonable grounds for failure
25 to do so.

1 (E) REVIEW.—The judgment and decree of
2 the court affirming, modifying, or setting aside
3 any such order of the Secretary shall be subject
4 only to review by the Supreme Court of the
5 United States upon certification or certiorari as
6 provided in section 1254 of title 28, United
7 States Code.

8 (f) ENFORCEMENT.—

9 (1) FAILURE TO OBEY.—If any licensee or
10 other person against which or against whom an
11 order is issued under this section fails to obey the
12 order, the Secretary—

13 (A) may apply to the United States court
14 of appeals, within the circuit where the licensee
15 has its principal place of business, for the en-
16 forcement of the order; and

17 (B) shall file a transcript of the record
18 upon which the order complained of was en-
19 tered.

20 (2) NOTICE.—Upon the filing of the application
21 under paragraph (1), the court shall cause notice
22 thereof to be served on the licensee or other person.

23 (3) EVIDENCE.—The evidence to be considered,
24 the procedure to be followed, and the jurisdiction of
25 the court shall be the same as is provided in sub-

1 section (e) for applications to set aside or modify or-
2 ders.

3 **SEC. 14. EXAMINATIONS AND INVESTIGATIONS.**

4 (a) INVESTIGATIONS.—

5 (1) IN GENERAL.—The Secretary may make
6 such investigations as the Secretary deems necessary
7 to determine whether a licensee or any other person
8 has engaged or is about to engage in any acts or
9 practices which constitute or will constitute a viola-
10 tion of any provision of this Act, or of any rule or
11 regulation under this Act, or of any order issued
12 under this Act.

13 (2) STATEMENTS.—The Secretary shall permit
14 any person to file with it a statement in writing,
15 under oath or otherwise as the Secretary shall deter-
16 mine, as to all the facts and circumstances con-
17 cerning the matter to be investigated.

18 (3) OATHS AND AFFIRMATIONS.—For the pur-
19 pose of any investigation under this subsection, the
20 Secretary is empowered to—

- 21 (A) administer oaths and affirmations;
22 (B) subpoena witnesses;
23 (C) compel the attendance of witnesses;
24 (D) take evidence; and

1 (E) require the production of any books,
2 papers, and documents that are relevant to the
3 inquiry.

4 (4) ATTENDANCE AND PRODUCTION.—

5 (A) IN GENERAL.—Attendance of wit-
6 nesses and the production of any such records
7 under this section may be required from any
8 place in the United States.

9 (B) FAILURE TO OBEY.—In case of contu-
10 macy by, or refusal to obey a subpoena issued
11 to, any person, including a licensee, the Sec-
12 retary may invoke the aid of any court of the
13 United States within the jurisdiction of which
14 such investigation or proceeding is carried on,
15 or where such person resides or carries on busi-
16 ness, in requiring the attendance and testimony
17 of witnesses and the production of books, pa-
18 pers, and documents, and such court may issue
19 an order requiring such person to appear before
20 the Department, thereto produce records, if so
21 ordered, or to give testimony touching the mat-
22 ter under investigation.

23 (C) ENFORCEMENT.—Any failure to obey
24 such order of the court may be punished by
25 such court as a contempt thereof.

1 (D) SERVICE OF PROCESS.—All process in
2 any such case may be served in the judicial dis-
3 trict whereof such person is an inhabitant or
4 wherever he may be found.

5 (b) EXAMINATIONS.—

6 (1) IN GENERAL.—Each licensee shall be sub-
7 ject to examinations made by direction of the De-
8 partment, which may be conducted with the assist-
9 ance of a private sector entity that has both the
10 qualifications to conduct and expertise in conducting
11 such examinations, and the cost of such examina-
12 tions, including the compensation of the examiners,
13 may, in the discretion of the Department, be as-
14 sessed against the licensee examined and when so
15 assessed shall be paid by the licensee.

16 (2) FEES.—Fees collected under this subsection
17 shall be deposited in the account for salaries and ex-
18 penses of the Department, and are authorized to be
19 appropriated solely to cover the costs of examina-
20 tions and other oversight activities under this Act.

21 (3) REPORTS.—Every licensee shall make such
22 reports to the Secretary at such times and in such
23 form as the Secretary may require, except that the
24 Secretary is authorized to exempt from making such
25 reports any such licensee that is registered under

1 the Investment Company Act of 1940 (15 U.S.C.
2 80a–1 et seq.) to the extent necessary to avoid dupli-
3 cation in reporting requirements.

4 (4) REQUIRED INFORMATION.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), each licensee shall be exam-
7 ined not less frequently than once every 2 years
8 in such detail so as to determine whether or
9 not—

10 (i) the licensee has engaged solely in
11 lawful activities and those contemplated by
12 this Act;

13 (ii) the licensee has engaged in pro-
14 hibited conflicts of interest under section
15 16;

16 (iii) the licensee has acquired or exer-
17 cised illegal control of a covered business
18 concern;

19 (iv) the licensee has made investments
20 in covered businesses for not less than 1
21 year;

22 (v) the licensee has adhered to port-
23 folio diversification limits as stated under
24 section 9;

1 (vi) the licensee has engaged in re-
2 lending, foreign investments, or passive in-
3 vestments;

4 (vii) the licensee has charged an inter-
5 est rate in excess of the maximum per-
6 mitted by law; or

7 (viii) the licensee has adhered to the
8 requirements to make covered investments.

9 (B) WAIVER.—The Secretary may waive
10 any examination required under subparagraph
11 (A)—

12 (i) for not more than 1 year if, in the
13 discretion of the Secretary, the Secretary
14 determines such a delay would be appro-
15 priate, based on the amount of debentures
16 being issued by the licensee and the repay-
17 ment record of the licensee, the prior oper-
18 ating experience of the licensee, the con-
19 tents and results of the last examination
20 and the management expertise of the li-
21 censee; or

22 (ii) if it is the examination of a li-
23 censee whose operations have been sus-
24 pended while the licensee is involved in liti-
25 gation or is in receivership.

1 (c) VALUATIONS.—

2 (1) FREQUENCY OF VALUATIONS.—

3 (A) IN GENERAL.—Each licensee shall sub-
4 mit to the Secretary a written valuation of the
5 loans and investments of the licensee not less
6 often than semiannually or otherwise upon the
7 request of the Secretary, except that any li-
8 censee with no leverage outstanding shall sub-
9 mit such valuations annually, unless the Sec-
10 retary determines otherwise.

11 (B) MATERIAL ADVERSE CHANGES.—Not
12 later than 30 days after the end of a fiscal
13 quarter of a licensee during which a material
14 adverse change in the aggregate valuation of
15 the loans and investments or operations of the
16 licensee occurs, the licensee shall notify the Sec-
17 retary in writing of the nature and extent of
18 that change.

19 (C) INDEPENDENT CERTIFICATION.—

20 (i) IN GENERAL.—Not less frequently
21 than once during each fiscal year, each li-
22 censee shall submit to the Secretary the fi-
23 nancial statements of the licensee, audited
24 by an independent certified public account-
25 ant approved by the Secretary.

1 (ii) AUDIT REQUIREMENTS.—Each
2 audit conducted under clause (i) shall in-
3 clude—

4 (I) a review of the procedures
5 and documentation used by the li-
6 censee in preparing the valuations re-
7 quired by this section; and

8 (II) a statement by the inde-
9 pendent certified public accountant
10 that such valuations were prepared in
11 conformity with the valuation criteria
12 applicable to the licensee established
13 in accordance with paragraph (2).

14 (2) VALUATION CRITERIA.—Each valuation
15 submitted under this subsection shall be prepared by
16 the licensee in accordance with valuation criteria,
17 which shall—

18 (A) be established or approved by the Sec-
19 retary; and

20 (B) include appropriate safeguards to en-
21 sure that the noncash assets of a licensee are
22 not overvalued.

23 **SEC. 15. INJUNCTIONS AND OTHER ORDERS.**

24 (a) IN GENERAL.—Whenever, in the judgment of the
25 Secretary, a licensee or any other person has engaged or

1 is about to engage in any acts or practices which con-
2 stitute or will constitute a violation of any provision of
3 this Act, or of any rule or regulation under this Act, or
4 of any order issued under this Act, the Secretary may
5 make application to the proper district court of the United
6 States or a United States court of any place subject to
7 the jurisdiction of the United States for an order enjoining
8 such acts or practices, or for an order enforcing compli-
9 ance with such provision, rule, regulation, or order, and
10 such courts shall have jurisdiction of such actions and,
11 upon a showing by the Secretary that such licensee or
12 other person has engaged or is about to engage in any
13 such acts or practices, a permanent or temporary injunc-
14 tion shall be granted without bond.

15 (b) **EXCLUSIVE JURISDICTION.**—In any proceeding
16 under subsection (a), the court as a court of equity—

17 (1) may, to such extent as the court deems nec-
18 essary, take exclusive jurisdiction of the licensee or
19 licensees and the assets thereof, wherever located;
20 and

21 (2) shall have jurisdiction in any such pro-
22 ceeding to appoint a trustee or receiver to hold or
23 administer under the direction of the court the as-
24 sets so possessed.

25 (c) **TRUSTEE AND RECEIVERSHIP.**—

1 (1) **AUTHORITY.**—The Secretary shall have au-
2 thority to act as trustee or receiver of the licensee.

3 (2) **APPOINTMENT.**—Upon request by the Sec-
4 retary, the court may appoint the Secretary to act
5 in such capacity unless the court deems such ap-
6 pointment inequitable or otherwise inappropriate by
7 reason of the special circumstances involved.

8 **SEC. 16. CONFLICTS OF INTEREST.**

9 (a) **IN GENERAL.**—For the purpose of controlling
10 conflicts of interest that may be detrimental to covered
11 business concerns, to licensees, to the shareholders, part-
12 ners, or members of either, or to the purposes of this Act,
13 the Secretary shall adopt regulations to govern trans-
14 actions with any officer, director, shareholder, partner, or
15 member of any licensee, or with any person or concern,
16 in which any interest, direct or indirect, financial or other-
17 wise, is held by any officer, director, shareholder, partner,
18 or member of any licensee, or any person or concern with
19 an interest, direct or indirect, financial or otherwise, in
20 any licensee.

21 (b) **PUBLIC DISCLOSURE.**—Regulations adopted
22 under subsection (a) shall include appropriate require-
23 ments for public disclosure necessary to the purposes of
24 this section.

1 (c) CONSULTATION WITH EXISTING REGULA-
2 TIONS.—In making any initial determination relating to
3 a regulation adopted under subsection (a), the Secretary
4 shall consult the regulations promulgated by the Adminis-
5 trator of the Small Business Administration on financing
6 which constitute conflicts of interest in accordance with
7 section 312 of the Small Business Investment Act of 1958
8 (15 U.S.C. 687d).

9 (d) REGULATIONS.—The Secretary shall promulgate
10 regulations under this section in accordance with the im-
11 plementation milestones as set forth in section 3(l) of this
12 Act.

13 **SEC. 17. REMOVAL OR SUSPENSION OF MANAGEMENT OF-**
14 **FICIALS.**

15 (a) DEFINITION OF MANAGEMENT OFFICIAL.—In
16 this section, the term “management official” means an of-
17 ficer, director, general partner, manager, employee, agent,
18 or other participant in the management or conduct of the
19 affairs of a licensee.

20 (b) REMOVAL OF MANAGEMENT OFFICIALS.—

21 (1) NOTICE OF REMOVAL.—The Secretary may
22 serve upon any management official a written notice
23 of its intention to remove that management official
24 whenever, in the opinion of the Secretary—

25 (A) such management official—

1 (i) has willfully and knowingly com-
2 mitted any substantial violation of—

3 (I) this Act;

4 (II) any regulation issued under
5 this Act; or

6 (III) a cease-and-desist order
7 which has become final; or

8 (ii) has willfully and knowingly com-
9 mitted or engaged in any act, omission, or
10 practice which constitutes a substantial
11 breach of a fiduciary duty of that person
12 as a management official; and

13 (B) the violation or breach of fiduciary
14 duty is one involving personal dishonesty on the
15 part of such management official.

16 (2) CONTENTS OF NOTICE.—A notice of inten-
17 tion to remove a management official, as provided in
18 paragraph (1), shall contain a statement of the facts
19 constituting grounds therefor, and shall fix a time
20 and place at which a hearing will be held thereon.

21 (3) HEARINGS.—

22 (A) TIMING.—A hearing described in para-
23 graph (2) shall be fixed for a date not earlier
24 than 30 days nor later than 60 days after the
25 date of service of notice of the hearing, unless

1 an earlier or a later date is set by the Secretary
2 at the request of—

3 (i) the management official, and for
4 good cause shown; or

5 (ii) the Attorney General of the
6 United States.

7 (B) CONSENT.—Unless the management
8 official shall appear at a hearing described in
9 this paragraph in person or by a duly author-
10 ized representative, that management official
11 shall be deemed to have consented to the
12 issuance of an order of removal under para-
13 graph (4)(A).

14 (4) ISSUANCE OF ORDER OF REMOVAL.—

15 (A) IN GENERAL.—In the event of consent
16 under paragraph (3)(B), or if upon the record
17 made at a hearing described in this subsection,
18 the Secretary finds that any of the grounds
19 specified in the notice of removal has been es-
20 tablished, the Secretary may issue such orders
21 of removal from office as the Secretary deems
22 appropriate.

23 (B) EFFECTIVENESS.—An order under
24 subparagraph (A) shall—

1 (i) become effective at the expiration
2 of 30 days after the date of service upon
3 the subject licensee and the management
4 official concerned (except in the case of an
5 order issued upon consent as described in
6 paragraph (3)(B), which shall become ef-
7 fective at the time specified in such order);
8 and

9 (ii) remain effective and enforceable,
10 except to such extent as it is stayed, modi-
11 fied, terminated, or set aside by action of
12 the Secretary or a reviewing court in ac-
13 cordance with this section.

14 (c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICI-
15 PATION.—

16 (1) IN GENERAL.—The Secretary may, if the
17 Secretary deems it necessary for the protection of
18 the licensee or the interests of the Department, sus-
19 pend from office or prohibit from further participa-
20 tion in any manner in the management or conduct
21 of the affairs of the licensee, or both, any manage-
22 ment official referred to in subsection (b)(1), by
23 written notice to such effect served upon the man-
24 agement official.

1 (2) EFFECTIVENESS.—A suspension or prohibi-
2 tion under paragraph (1)—

3 (A) shall become effective upon service of
4 notice under paragraph (1); and

5 (B) unless stayed by a court in proceedings
6 authorized by paragraph (3), shall remain in ef-
7 fect—

8 (i) pending the completion of the ad-
9 ministrative proceedings pursuant to a no-
10 tice of intention to remove served under
11 subsection (b); and

12 (ii) until such time as the Secretary
13 shall dismiss the charges specified in the
14 notice, or, if an order of removal or prohi-
15 bition is issued against the management
16 official, until the effective date of any such
17 order.

18 (3) JUDICIAL REVIEW.—Not later than 10 days
19 after any management official has been suspended
20 from office or prohibited from participation in the
21 management or conduct of the affairs of a licensee,
22 or both, under paragraph (1), that management offi-
23 cial may apply to the United States District Court
24 for the judicial district in which the home office of
25 the licensee is located, or the United States District

1 Court for the District of Columbia, for a stay of the
2 suspension or prohibition pending the completion of
3 the administrative proceedings pursuant to a notice
4 of intent to remove served upon the management of-
5 ficial under subsection (b), and such court shall have
6 jurisdiction to stay such action.

7 (d) AUTHORITY TO SUSPEND ON CRIMINAL
8 CHARGES.—

9 (1) IN GENERAL.—Whenever a management of-
10 ficial is charged in any information, indictment, or
11 complaint authorized by a United States attorney,
12 with the commission of or participation in a felony
13 involving dishonesty or breach of trust, the Sec-
14 retary may, by written notice served upon that man-
15 agement official, suspend that management official
16 from office or prohibit that management official
17 from further participation in any manner in the
18 management or conduct of the affairs of the li-
19 censee, or both.

20 (2) EFFECTIVENESS.—A suspension or prohibi-
21 tion under paragraph (1) shall remain in effect until
22 the subject information, indictment, or complaint is
23 finally disposed of, or until terminated by the Sec-
24 retary.

1 (3) AUTHORITY UPON CONVICTION.—If a judg-
2 ment of conviction with respect to an offense de-
3 scribed in paragraph (1) is entered against a man-
4 agement official, then at such time as the judgment
5 is not subject to further appellate review, the Sec-
6 retary may issue and serve upon the management
7 official an order removing that management official,
8 which removal shall become effective upon service of
9 a copy of the order upon the licensee.

10 (4) AUTHORITY UPON DISMISSAL OR OTHER
11 DISPOSITION.—A finding of not guilty or other dis-
12 position of charges described in paragraph (1) shall
13 not preclude the Secretary from thereafter insti-
14 tuting proceedings to suspend or remove the man-
15 agement official from office, or to prohibit the man-
16 agement official from participation in the manage-
17 ment or conduct of the affairs of the licensee, or
18 both, pursuant to subsection (b) or (c).

19 (e) NOTIFICATION TO LICENSEES.—Copies of each
20 notice required to be served on a management official
21 under this section shall also be served upon the interested
22 licensee.

23 (f) PROCEDURAL PROVISIONS; JUDICIAL REVIEW.—

24 (1) HEARING VENUE.—Any hearing provided
25 for in this section shall be—

1 (A) held in the Federal judicial district or
2 in the territory in which the principal office of
3 the licensee is located, unless the party afforded
4 the hearing consents to another place; and

5 (B) conducted in accordance with the pro-
6 visions of chapter 5 of title 5, United States
7 Code.

8 (2) ISSUANCE OF ORDERS.—After a hearing
9 provided for in this section, and not later than 90
10 days after the Secretary has notified the parties that
11 the case has been submitted for final decision, the
12 Secretary shall render a decision in the matter
13 (which shall include findings of fact upon which its
14 decision is predicated), and shall issue and cause to
15 be served upon each party to the proceeding an
16 order or orders consistent with the provisions of this
17 section.

18 (3) AUTHORITY TO MODIFY ORDERS.—The Sec-
19 retary may modify, terminate, or set aside any order
20 issued under this section—

21 (A) at any time, upon such notice, and in
22 such manner as the Secretary deems proper,
23 unless a petition for review is timely filed in a
24 court of appeals of the United States, as pro-
25 vided in paragraph (4)(B), and thereafter until

1 the record in the proceeding has been filed in
2 accordance with paragraph (4)(C); and

3 (B) upon such filing of the record, with
4 permission of the court.

5 (4) JUDICIAL REVIEW.—

6 (A) IN GENERAL.—Judicial review of an
7 order issued under this section shall be exclu-
8 sively as provided in this paragraph.

9 (B) PETITION FOR REVIEW.—Any party to
10 a hearing provided for in this section may ob-
11 tain a review of any order issued pursuant to
12 paragraph (2) (other than an order issued with
13 the consent of the management official con-
14 cerned, or an order issued under subsection
15 (d)), by filing in the court of appeals of the
16 United States for the circuit in which the prin-
17 cipal office of the licensee is located, or in the
18 United States Court of Appeals for the District
19 of Columbia Circuit, not later than 30 days
20 after the date of service of such order, a written
21 petition praying that the order of the Secretary
22 be modified, terminated, or set aside.

23 (C) NOTIFICATION TO DEPARTMENT.—A
24 copy of a petition filed under subparagraph (B)
25 shall be forthwith transmitted by the clerk of

1 the court to the Secretary, and thereupon the
2 Secretary shall file in the court the record in
3 the proceeding, as provided in section 2112 of
4 title 28, United States Code.

5 (D) COURT JURISDICTION.—Upon the fil-
6 ing of a petition under subparagraph (A)—

7 (i) the court shall have jurisdiction,
8 which, upon the filing of the record under
9 subparagraph (C), shall be exclusive, to af-
10 firm, modify, terminate, or set aside, in
11 whole or in part, the order of the Sec-
12 retary;

13 (ii) review of such proceedings shall
14 be had as provided in chapter 7 of title 5,
15 United States Code; and

16 (iii) the judgment and decree of the
17 court shall be final, except that the judg-
18 ment and decree shall be subject to review
19 by the Supreme Court of the United States
20 upon certiorari, as provided in section
21 1254 of title 28, United States Code.

22 (E) JUDICIAL REVIEW NOT A STAY.—The
23 commencement of proceedings for judicial re-
24 view under this paragraph shall not, unless spe-
25 cifically ordered by the court, operate as a stay

1 of any order issued by the Secretary under this
2 section.

3 **SEC. 18. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS,**
4 **DIRECTORS, EMPLOYEES, OR AGENTS;**
5 **BREACH OF FIDUCIARY DUTY.**

6 (a) IN GENERAL.—Wherever a licensee violates any
7 provision of this Act or regulation issued thereunder by
8 reason of the failure of the licensee to comply with the
9 terms thereof or by reason of the licensee engaging in any
10 act or practice which constitutes or will constitute a viola-
11 tion thereof, such violation shall be deemed to be also a
12 violation and an unlawful act on the part of any person
13 who, directly or indirectly, authorizes, orders, participates
14 in, or causes, brings about, counsels, aids, or abets in the
15 commission of any acts, practices, or transactions which
16 constitute or will constitute, in whole or in part, such vio-
17 lation.

18 (b) UNLAWFUL ACTS.—

19 (1) PROHIBITION.—It shall be unlawful for any
20 officer, director, employee, agent, or other partici-
21 pant in the management or conduct of the affairs of
22 a licensee to engage in any act or practice, or to
23 omit any act, in breach of his fiduciary duty as such
24 officer, director, employee, agent, or participant, if,
25 as a result thereof, the licensee has suffered or is in

1 imminent danger of suffering financial loss or other
2 damage.

3 (2) SPECIFIC ACTS AND OMISSIONS.—Except
4 with the written consent of the Secretary, it shall be
5 unlawful—

6 (A) for any person hereafter to take office
7 as an officer, director, or employee of a licensee,
8 or to become an agent or participant in the con-
9 duct of the affairs or management of a licensee,
10 if—

11 (i) the person has been convicted of a
12 felony, or any other criminal offense in-
13 volving dishonesty or breach of trust; or

14 (ii) the person has been found civilly
15 liable in damages, or has been permanently
16 or temporarily enjoined by an order, judg-
17 ment, or decree of a court of competent ju-
18 risdiction, by reason of any act or practice
19 involving fraud or breach of trust; or

20 (B) for any person to continue to serve in
21 any of the above described capacities, if—

22 (i) the person is hereafter convicted of
23 a felony, or any other criminal offense in-
24 volving dishonesty or breach of trust; or

1 (ii) the person is hereafter found civ-
2 illy liable in damages or is permanently or
3 temporarily enjoined by an order, judg-
4 ment, or decree of a court of competent ju-
5 risdiction, by reason of any act or practice
6 involving fraud or breach of trust.

7 **SEC. 19. PENALTIES AND FORFEITURES.**

8 (a) PENALTIES.—

9 (1) IN GENERAL.—Except as provided in sub-
10 section (b), a licensee that violates any regulation or
11 written directive issued by the Secretary issued
12 under this Act, requiring the filing of any regular or
13 special report pursuant to section 12, shall forfeit
14 and pay to the United States a civil penalty of not
15 more than \$100 for each day of the continuance of
16 the failure by the licensee to file such report, unless
17 it is shown that such failure is due to reasonable
18 cause and not due to willful neglect.

19 (2) ACCRUAL.—Any civil penalty under para-
20 graph (1) shall accrue to the United States and may
21 be recovered in a civil action brought by the Sec-
22 retary.

23 (b) ENFORCEMENT.—The Secretary may—

24 (1) by rules and regulations, or upon applica-
25 tion of an interested party, at any time previous to

1 such failure, by order, after notice and opportunity
2 for hearing, exempt in whole or in part, any licensee
3 from the provisions of subsection (a) of this section,
4 upon such terms and conditions and for such period
5 of time as the Secretary deems necessary and appro-
6 priate, if the Secretary finds that such action is not
7 inconsistent with the public interest or the protec-
8 tion of the Department; and

9 (2) for the purposes of this section make any
10 alternative requirements appropriate to the situa-
11 tion.

12 **SEC. 20. JURISDICTION AND SERVICE OF PROCESS.**

13 Any suit or action brought under section 13, 15, 17,
14 19, or 23 by the Department at law or in equity to enforce
15 any liability or duty created by, or to enjoin any violation
16 of this Act, or any rule, regulation, or order promulgated
17 thereunder, shall be brought in the district wherein the
18 licensee maintains its principal office, and process in such
19 cases may be served in any district in which the defendant
20 maintains its principal office or transacts business, or
21 wherever the defendant may be found.

22 **SEC. 21. ISSUANCE AND GUARANTEE OF TRUST CERTIFI-**
23 **CATES.**

24 (a) **AUTHORITY TO ISSUE TRUST CERTIFICATES.—**
25 The Secretary may issue trust certificates representing

1 ownership of all or a fractional part of debentures issued
2 by licensees and guaranteed by the Department under this
3 Act, provided that the trust certificates shall be based on
4 and backed by a trust or pool approved by the Secretary
5 and composed solely of guaranteed debentures.

6 (b) GUARANTEE AUTHORITY.—

7 (1) IN GENERAL.—The Secretary may, upon
8 such terms and conditions as are deemed appro-
9 priate, to guarantee the timely payment of the prin-
10 cipal of and interest on trust certificates issued by
11 the Department or its agent for purposes of this sec-
12 tion.

13 (2) LIMITATION.—Such guarantee shall be lim-
14 ited to the extent of principal and interest on the
15 guaranteed debentures which compose the trust or
16 pool.

17 (3) REDUCTION OF GUARANTEE.—In the event
18 that a debenture in such trust or pool is prepaid, ei-
19 ther voluntarily or involuntarily, or in the event of
20 default of a debenture, the guarantee of timely pay-
21 ment of principal and interest on the trust certifi-
22 cates shall be reduced in proportion to the amount
23 of principal and interest such prepaid debenture and
24 priority payments represent in the trust or pool.

1 (4) INTEREST.—Interest on prepaid or de-
2 faulted debentures shall accrue and be guaranteed
3 by the Department only through the date of pay-
4 ment on the guarantee.

5 (5) REDEMPTION.—During the term of the
6 trust certificate, it may be called for redemption due
7 to prepayment or default of all debentures.

8 (c) FULL FAITH AND CREDIT.—The full faith and
9 credit of the United States is pledged to the payment of
10 all amounts that may be required to be paid under any
11 guarantee of such trust certificates issued by the Sec-
12 retary pursuant to this section.

13 (d) FEES.—The Secretary may not collect a fee for
14 any guarantee under this section, provided that nothing
15 herein shall preclude any agent of the Department from
16 collecting a fee approved by the Department for the func-
17 tions described in subsection (f)(2).

18 (e) RIGHTS OF THE DEPARTMENT.—

19 (1) SUBROGATION.—In the event the Secretary
20 pays a claim under a guarantee issued under this
21 section, it shall be subrogated fully to the rights sat-
22 isfied by such payment.

23 (2) OWNERSHIP RIGHTS.—No State or local
24 law, and no Federal law, shall preclude or limit the
25 exercise by the Secretary of the ownership rights of

1 the Secretary in the debentures residing in a trust
2 or pool against which trust certificates are issued.

3 (f) RESPONSIBILITIES.—

4 (1) REGISTRATION.—The Secretary shall pro-
5 vide for a central registration of all trust certificates
6 sold pursuant to this section.

7 (2) CONTRACTS.—The Secretary shall contract
8 with an agent or agents to carry out, on behalf of
9 the Department, the pooling and the central reg-
10 istration functions of this section including, notwith-
11 standing any other provision of law, maintenance on
12 behalf of and under the direction of the Department,
13 such commercial bank accounts or investments in
14 obligations of the United States as may be necessary
15 to facilitate trusts or pools backed by guaranteed
16 under this Act, and the issuance of trust certificates
17 to facilitate such poolings. Such agent or agents
18 shall provide a fidelity bond or insurance in such
19 amounts as the Secretary determines to be necessary
20 to fully protect the interests of the Government.

21 (3) DISCLOSURES.—Before any sale of a trust
22 certificate, the Secretary shall require the seller to
23 disclose to a purchaser of a trust certificate issued
24 pursuant to this section, information on the terms,
25 conditions, and yield of such instrument.

1 (4) REGULATION OF BROKERS AND DEAL-
2 ERS.—The Secretary is authorized to regulate bro-
3 kers and dealers in trust certificates sold pursuant
4 to this section.

5 (5) RULE OF CONSTRUCTION.—Nothing in this
6 subsection shall prohibit the use of a bookentry or
7 other electronic form of registration for trust certifi-
8 cates.

9 **SEC. 22. PERIODIC ISSUANCE OF GUARANTEES AND TRUST**
10 **CERTIFICATES.**

11 The Secretary shall issue guarantees under section
12 7 and trust certificates under section 21 at periodic inter-
13 vals of not less than every 12 months and shall do so at
14 such shorter intervals as the Secretary deems appropriate,
15 taking into consideration the amount and number of such
16 guarantees or trust certificates.

17 **SEC. 23. MISCELLANEOUS.**

18 (a) COOPERATION WITH BANKS, INVESTORS, AND
19 LENDERS.—Whenever practicable, the operations of an
20 ownership investment company, including the generation
21 of business, may be undertaken in cooperation with banks
22 or other investors or lenders, incorporated or unincor-
23 porated, and any servicing or initial investigation required
24 for loans or acquisitions of securities by the company
25 under the provisions of this Act may be handled through

1 such banks or other investors or lenders on a fee basis.
2 Any ownership investment company may receive fees for
3 services rendered to such banks and other investors and
4 lenders.

5 (b) REGULATIONS.—The Secretary is authorized to
6 prescribe regulations governing the operations of owner-
7 ship investment companies, and to carry out the provisions
8 of this Act, in accordance with the purposes of this Act.

9 (c) DISSOLUTION OR FORFEITURE OF RIGHTS.—
10 Should any ownership investment company violate or fail
11 to comply with any of the provisions of this Act or of regu-
12 lations prescribed hereunder, all of the rights, privileges,
13 and franchises derived therefrom may thereby be forfeited.
14 Before any such ownership investment company shall be
15 declared dissolved, or its rights, privileges, and franchises
16 forfeited, any noncompliance with or violation of this Act
17 shall be determined and adjudged by a court of the United
18 States of competent jurisdiction in a suit brought for that
19 purpose in the district, territory, or other place subject
20 to the jurisdiction of the United States, in which the prin-
21 cipal office of the ownership investment company is lo-
22 cated. Any such suit shall be brought by the United States
23 at the instance of the Secretary or the Attorney General.

24 (d) LIABILITY.—Except as expressly provided other-
25 wise in this Act, nothing in this Act or in any other provi-

1 sion of law shall be deemed to impose any liability on the
2 United States with respect to any obligations entered into,
3 or stocks issued, or commitments made, by any company
4 operating under the provisions of this Act.