

119TH CONGRESS
1ST SESSION

H. R. 3248

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

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2025

Mr. MOORE of Utah (for himself, Mrs. TRAHAN, Mr. JOHNSON of South Dakota, and Mr. FOSTER) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a domestic ownership succession 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:

1 (1) 1940 ACT COMPANY.—The term “1940 Act
2 Company” means an investment company subject to
3 registration under the Investment Company Act of
4 1940 (15 U.S.C. 80a–1 et seq.).

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

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

10 (A) articles of incorporation for an incor-
11 porated body; or

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

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

21 (5) COVERED BUSINESS CONCERN.—The term
22 “covered business concern” means an enterprise, re-
23 gardless of any size standard, that is independently
24 owned and operated, except that an investment by a
25 venture capital firm, investment company, employee

1 welfare benefit plan or pension plan, or trust, foun-
2 dation, or endowment that is exempt from Federal
3 income taxation shall not cause a business concern
4 to be deemed not independently owned and operated
5 regardless of the allocation of control during the in-
6 vestment period under any investment agreement be-
7 tween the business concern and the entity making
8 the investment.

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

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

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

24 (ii) with respect to such a sale to an
25 employee stock ownership plan, the ap-

1 pointment of an independent trustee for
2 the transaction; or

3 (B) the provision of capital to finance a
4 covered business concern if—

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

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

17 (7) DEPARTMENT.—The term “Department”
18 means the Department of Commerce.

19 (8) ELIGIBLE WORKER-OWNED COOPERA-
20 TIVE.—The term “eligible worker-owned coopera-
21 tive” has the meaning given that term in section
22 1042(c) of the Internal Revenue Code of 1986.

23 (9) EMPLOYEE STOCK OWNERSHIP PLAN.—The
24 term “employee stock ownership plan” has the

1 meaning given that term in section 4975(e) of the
2 Internal Revenue Code of 1986.

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

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

10 (B) include—

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

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

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

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

25 (B) has never—

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

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

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

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

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

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

23 (ii) any other entity that is struc-
24 turing or financing the transaction for any

1 party other than the employee stock owner-
2 ship plan; and

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

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

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

11 (B) has never—

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

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

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

benefit plan (including an employee stock ownership plan) under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

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

(i) the ownership investment company that is preparing to or has already allocated capital to the covered business concern; or

(ii) any other entity that is structuring or financing the transaction for any party other than the employee stock ownership plan; and

(E) does not have a familial or corporate relationship (such as a parent-subsidiary relationship) to any person or entity described in subparagraph (B), (C), or (D).

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

(14) LICENSE.—The term “license” means a license issued by the Department as provided in section 4(c).

1 (15) LICENSEE.—The term “licensee” means a
2 company approved by the Secretary to operate under
3 the provisions of this Act and issued a license pro-
4 vided in section 4(c).

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

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

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

17 (A) has no outstanding leverage or lever-
18 age commitment; and

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

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

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

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

6 (B) for which—

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

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

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

20 (21) PREFERRED STOCK.—The term “preferred
21 stock” has the meaning given that term in section
22 351(g)(3) of the Internal Revenue Code of 1986.

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

25 (A) means the sum of—

1 (i) the paid-in capital and paid-in sur-
2 plus of a corporate licensee, the contrib-
3 uted capital of the partners of a partner-
4 ship licensee, or the equity investment of
5 the members of a limited liability company
6 licensee; and

7 (ii) unfunded binding commitments,
8 from investors that meet criteria estab-
9 lished by the Secretary, to contribute cap-
10 ital to the licensee, provided that such un-
11 funded commitments may be counted as
12 private capital for purposes of approval by
13 the Secretary of any request for leverage,
14 but leverage shall not be funded based on
15 such commitments; and

16 (B) does not include any—

17 (i) funds borrowed by a licensee from
18 any source;

19 (ii) funds obtained through the
20 issuance of leverage; or

21 (iii) funds obtained directly or indi-
22 rectly from any Federal, State, or local
23 government, or any government agency or
24 instrumentality, except for—

1 (I) funds obtained from the busi-
2 ness revenues (excluding any govern-
3 mental appropriation) of any federally
4 chartered or government-sponsored
5 corporation established before October
6 1, 1987;

7 (II) funds invested by an em-
8 ployee welfare benefit plan or pension
9 plan; and

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

16 (23) PROFITS INTEREST.—The term “profits
17 interests” means an interest in a subsidiary LLC
18 other than a capital interest.

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

23 (A) for which the managers of the firm
24 have a documented record of successful busi-
25 ness experience; and

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

4 (25) SECRETARY.—The term “Secretary”
5 means the Secretary of Commerce.

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

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

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

21 (B) the equity value of the subsidiary LLC
22 owned by the corporation that represents—

23 (i) not less than 51 percent of the
24 total value of all classes of equity of the
25 subsidiary LLC; and

1 (ii) not less than 51 percent equity
2 ownership of the subsidiary LLC.

3 (28) SYNTHETIC EQUITY.—The term “synthetic
4 equity” includes—

5 (A) synthetic equity, as defined in section
6 409(p)(6) of the Internal Revenue Code of
7 1986;

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

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

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

19 **SEC. 3. OWNERSHIP INVESTMENT FACILITY.**

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

23 (b) ESTABLISHMENT.—The Secretary shall establish
24 and carry out a facility to provide leverage to licensed own-

1 ership investment companies for the purpose of encour-
2 aging covered investments.

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

9 (d) TRANSACTION REQUIREMENTS.—

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

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

1 are financially fair to the employee stock ownership
2 plan.

3 (e) PROHIBITIONS.—

4 (1) FINANCING.—

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

10 (B) EXCEPTIONS.—Subparagraph (A)
11 shall not apply to—

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

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

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

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

14 (g) RECIRCULATION OF SHARES.—

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

24 (2) LIMITATION.—The requirements under
25 paragraph (1) shall apply only with respect to the

1 period during which the ownership investment com-
2 pany has an interest in the covered business con-
3 cern.

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

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

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

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

23 (2) S CORPORATION BOARD GOVERNANCE.—
24 The board governance of the subsidiary LLC resides

1 exclusively at the level of the S corporation by which
2 the subsidiary LLC is owned.

3 (3) PROFITS INTEREST.—The profits interest
4 or any type of similar arrangements, including phan-
5 tom stock and any deferred bonus plan related to eq-
6 uity in the subsidiary LLC, complies with section
7 409(p) of the Internal Revenue Code of 1986.

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

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

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

18 (A) before any stock sale or the execution
19 of any corporate matter listed in section
20 409(e)(3) of the Internal Revenue Code of
21 1986, the employee stock ownership plan
22 shall—

23 (i) appoint an independent trustee for
24 the transaction; and

1 (ii) require that the independent
2 trustee obtain a fairness opinion from an
3 independent financial advisor, which shall
4 evaluate whether the price, terms, and cost
5 of financing of the proposed covered invest-
6 ment are financially fair to the employee
7 stock ownership plan; and

8 (B) the employee stock ownership plan re-
9 quires that—

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

21 (ii) the requirements of section
22 409(e)(3) of the Internal Revenue Code of
23 1986 and clause (i) of this subparagraph
24 shall be met using the procedures de-

scribed in section 409(e)(5) of the Internal Revenue Code of 1986;

(iii) unless the parties agree otherwise, with respect to unallocated shares, the independent trustee shall be directed to vote or tender such unallocated shares in the same proportion as allocated shares for which the independent trustee has received voting or tender instructions from participants in the employee stock ownership plan; and

(iv) with respect to allocated shares that the independent trustee does not receive voting or tender instructions from participants in the employee stock ownership plan, the independent trustee shall have voting discretion over such shares.

(2) VOTING DISCRETION.—Nothing in paragraph (1)(B) shall limit the ability of an independent trustee to exercise voting discretion in accordance with the fiduciary obligations of the independent trustee under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(3) LIMITATION.—The requirements under paragraph (1) shall apply only with respect to the

1 period during which the ownership investment com-
2 pany has an interest in the covered business con-
3 cern.

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

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

13 (2) For an employee stock ownership plan—

14 (A) the effective date of the employee stock
15 ownership plan;

16 (B) the number of active employee stock
17 ownership plan participants;

18 (C) the number of employees of the cov-
19 ered business concern for which the employee
20 stock ownership plan is established;

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

1 (E) the total employee stock ownership
2 plan assets;

3 (F) the total contributions during the em-
4 ployee stock ownership plan year;

5 (G) the total distributions during the em-
6 ployee stock ownership plan year;

7 (H) the median account asset balance; and

8 (I) demographic information of employee
9 stock ownership plan participants,
10 disaggregated by race, gender, and State, to the
11 extent available.

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

13 (A) the number of member-owners;

14 (B) the number of employees of the cov-
15 ered business concern for which the eligible
16 worker-owned cooperative is established;

17 (C) the total value of employer securities;

18 (D) the aggregate assets of all membership
19 accounts of the eligible worker-owned coopera-
20 tive;

21 (E) the median membership account bal-
22 ance; and

23 (F) demographic information of member-
24 ship base, disaggregated by race, gender, and
25 State, to the extent available.

1 (l) IMPLEMENTATION MILESTONES.—

2 (1) IN GENERAL.—Not later than 540 days
3 after the date of enactment of this Act, the Sec-
4 retary shall begin accepting applications to be li-
5 censed to participate in the facility as an ownership
6 investment company.

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

13 (m) SUNSET.—

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

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

1 (3) CONTINUED PARTICIPATION BY EXISTING
 2 ENTITIES.—Nothing in paragraph (2) shall be con-
 3 strued to prohibit an ownership investment company
 4 (including a Protégé OIC) from continuing to draw
 5 leverage on and after the sunset date that was com-
 6 mitted to the entity through the facility before the
 7 sunset date.

8 (4) APPLICATION.—The Secretary shall not
 9 consider paragraph (2) as a factor in the decision to
 10 license an entity to participate in the facility as an
 11 ownership investment company (including as a
 12 Protégé OIC) before the sunset date.

13 **SEC. 4. ORGANIZATION OF OWNERSHIP INVESTMENT COM-**
 14 **PANIES.**

15 (a) IN GENERAL.—

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

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

1 (B) if a limited partnership, has succession
2 for a period of not fewer than 10 years, and
3 possesses the powers reasonably necessary to
4 perform such functions and conduct such activi-
5 ties.

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

12 (b) ARTICLES.—

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

15 (A) the objects for which the company is
16 formed in general terms;

17 (B) the name assumed by the ownership
18 investment company;

19 (C) the area or areas in which the oper-
20 ations of the ownership investment company are
21 to be carried on;

22 (D) the place where the principal office of
23 the ownership investment company is to be lo-
24 cated; and

1 (E) the amount and classes of the shares
2 of capital stock of the ownership investment
3 company.

4 (2) INCLUSIONS.—Articles of an ownership in-
5 vestment company may contain any other provisions
6 not inconsistent with this Act that the ownership in-
7 vestment company may see fit to adopt for the regu-
8 lation of the business of the ownership investment
9 company and the conduct of the affairs of the own-
10 ership investment company.

11 (3) APPROVAL.—Articles of an ownership in-
12 vestment company and any amendments thereto
13 adopted from time to time shall be subject to the ap-
14 proval of the Secretary.

15 (c) ISSUANCE OF LICENSE.—

16 (1) SUBMISSION OF APPLICATION.—

17 (A) IN GENERAL.—Each applicant to oper-
18 ate as an ownership investment company (in-
19 cluding a Protégé OIC) under this Act shall
20 submit to the Secretary an application, in a
21 form and including such documentation as may
22 be prescribed by the Secretary.

23 (B) ROLLING BASIS.—The Secretary shall
24 accept applications under subparagraph (A) on
25 a rolling basis.

1 (C) ELECTRONIC SUBMISSIONS.—The Sec-
2 retary shall allow an applicant under this sub-
3 section to electronically submit any document
4 required by this subsection and to provide an
5 electronic signature for any signature that is re-
6 quired on such a document.

7 (2) PROCEDURES.—

8 (A) STATUS.—Not later than 90 days after
9 the initial receipt by the Secretary of an appli-
10 cation under this subsection, the Secretary shall
11 provide the applicant with a written report de-
12 tailing the status of the application and any re-
13 quirements remaining for completion of the ap-
14 plication.

15 (B) APPROVAL OR DISAPPROVAL.—Within
16 90 days after receiving a completed application
17 submitted in accordance with this subsection
18 and in accordance with such requirements as
19 the Secretary may prescribe by regulation, the
20 Secretary shall—

21 (i) approve the application and issue a
22 license for such operation to the applicant
23 if the requirements of this section are sat-
24 isfied; or

1 (ii) disapprove the application and no-
2 tify the applicant in writing of the dis-
3 approval.

4 (3) MATTERS CONSIDERED.—

5 (A) IN GENERAL.—In reviewing and proc-
6 essing any application under this subsection,
7 the Secretary—

8 (i) shall determine whether—

9 (I) the applicant meets the re-
10 quirements of subsections (a) and (b)
11 of section 6; and

12 (II) the management of the ap-
13 plicant is qualified and has the knowl-
14 edge, experience, and capability nec-
15 essary to comply with this Act;

16 (ii) shall take into consideration—

17 (I) the need for and availability
18 of financing for a covered business
19 concern in the geographic area in
20 which the applicant is to commence
21 business;

22 (II) the general business reputa-
23 tion of the owners and management of
24 the applicant; and

1 (III) the probability of successful
 2 operations of the applicant, including
 3 adequate profitability and financial
 4 soundness; and

5 (iii) shall not take into consideration
 6 any projected shortage or unavailability of
 7 leverage.

8 (B) ADDITIONAL MATTERS CONSIDERED
 9 FOR OWNERSHIP INVESTMENT COMPANIES.—

10 (i) INVESTMENT TRACK RECORD.—

11 Except as provided in clause (ii), an appli-
 12 cant for a license to operate as an owner-
 13 ship investment company shall submit to
 14 the Secretary proof that the managers of
 15 the applicant have a track record of man-
 16 aging investments, including structured in-
 17 vestments, realized or unrealized, in an
 18 employee stock ownership plan or eligible
 19 worker-owned cooperative.

20 (ii) ADVISORY REQUIREMENT.—An
 21 applicant that does not have an investment
 22 track record described in clause (i) or that
 23 is a Protégé OIC shall submit to the Sec-
 24 retary evidence that the applicant has re-
 25 tained or will retain a legal, accounting, or

1 financial advisory firm with not fewer than
2 5 years of experience in structuring em-
3 ployee stock ownership plans or eligible
4 worker-owned cooperatives.

5 (iii) LIMITATION.—The Secretary may
6 not reject an applicant for a license to op-
7 erate as an ownership investment company
8 solely because the applicant lacks a suffi-
9 cient track record in realized investments
10 if the applicant demonstrates an otherwise
11 successful investment track record that in-
12 cludes unrealized covered investments.

13 (C) PROVISIONAL APPROVAL.—

14 (i) IN GENERAL.—The Secretary may
15 provide provisional approval for a license
16 to participate in the facility as an owner-
17 ship investment company (including a
18 Protégé OIC) for a period not to exceed 1
19 year to an investment firm submitting an
20 application under this subsection or—

21 (I) that does not meet the min-
22 imum private capital requirements
23 under section 6(a) necessary for li-
24 censing under this subsection at the
25 time of application;

1 (II) that states an intent to more
2 effectively raise capital commitments
3 in private markets with a license; and

4 (III) that states an intent to
5 more precisely request the desired
6 amount of leverage contingent on se-
7 curing capital from private market in-
8 vestors.

9 (ii) CAPITAL REQUIREMENTS.—An
10 applicant granted provisional approval
11 under clause (i) shall not be eligible to re-
12 ceive leverage until the applicant satisfies
13 the requirements of section 6(a).

14 (D) FEES.—

15 (i) IN GENERAL.—The Secretary may
16 prescribe fees to be paid by each applicant
17 for a license to operate as an ownership in-
18 vestment company (including a Protégé
19 OIC) under this Act.

20 (ii) USE OF AMOUNTS.—Fees col-
21 lected under this subparagraph—

22 (I) shall be deposited in the ac-
23 count for salaries and expenses of the
24 Department; and

1 (II) are authorized to be appro-
2 priated solely to cover the costs of li-
3 censing examinations.

4 (d) 1940 AND 1980 ACT COMPANIES.—

5 (1) IN GENERAL.—

6 (A) APPLICATION.—A 1940 Act Company
7 or 1980 Act Company is eligible to apply for a
8 license under this Act.

9 (B) ELIGIBILITY OF LICENSEES.—A li-
10 censee that is not registered as a 1940 Act
11 Company or 1980 Act Company is eligible to
12 apply for approval from the Secretary to con-
13 vert to a 1940 Act Company or 1980 Act Com-
14 pany.

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

23 **SEC. 5. PROTÉGÉ OIC PROGRAM.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
25 a program to be known as the “Protégé OIC Program”

1 under which a manager of an ownership investment com-
2 pany that is not a Protégé OIC may enter into a written
3 agreement approved by the Secretary to provide guidance
4 and assistance to a Protégé OIC with respect to—

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

7 (2) management of the ownership investment
8 company after licensure.

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

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

18 (d) REQUIREMENTS FOR MANAGERS.—If a manager
19 enters into a written agreement described in subsection
20 (a)—

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

24 (2) the otherwise applicable maximum amount
25 of outstanding leverage that may be made available

1 to any 1 licensed company of the manager under
2 section 7(b)(6)(B)(i)(I) shall be increased by
3 \$17,500,000; and

4 (3) the otherwise applicable maximum amount
5 of outstanding leverage that may be made available
6 to any 2 or more licensed companies that are com-
7 monly controlled by the manager under section
8 7(b)(6)(B)(i)(II) shall be increased by \$35,000,000.

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

10 (a) AMOUNT.—

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

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

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

21 (B) determine whether the licensee will be
22 able, both prior to licensing and prior to ap-
23 proving any request for financing, to make peri-
24 odic payments on any debt of the licensee that
25 is interest bearing and shall take into consider-

1 ation the income that the licensee anticipates on
2 the contemplated investments of the licensee,
3 the experience of the owners and managers of
4 the licensee, the history of the licensee as an
5 entity, if any, and the financial resources of the
6 licensee.

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

14 **SEC. 7. BORROWING POWER.**

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

20 (b) AUTHORITY TO GUARANTEE.—

21 (1) GRANT OF AUTHORITY.—To encourage the
22 formation and growth of ownership investment com-
23 panies the Secretary may, when authorized in appro-
24 priation Acts, guarantee the timely payment of all

1 principal and interest as scheduled on debentures
2 issued by ownership investment companies.

3 (2) TERMS AND CONDITIONS.—Guarantees
4 made under paragraph (1) may be made by the Sec-
5 retary on such terms and conditions as the Secretary
6 deems appropriate, pursuant to regulations issued by
7 the Secretary.

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

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

21 (5) TERM AND INTEREST RATE.—A debenture
22 issued under this subsection may be issued for a
23 term of not to exceed 15 years and shall bear inter-
24 est at a rate not less than a rate determined by the
25 Secretary of the Treasury, taking into consideration

1 the current average market yield on outstanding
2 marketable obligations of the United States with re-
3 maining periods to maturity comparable to the aver-
4 age maturities on such debentures, adjusted to the
5 nearest $\frac{1}{8}$ of 1 per centum, plus an additional
6 charge, in an amount established annually by the
7 Secretary, as necessary to reduce to 0 the cost (as
8 defined in section 502 of the Federal Credit Reform
9 Act of 1990 (2 U.S.C. 661a)) to the Department
10 guaranteeing debentures under this Act, which
11 amount may not exceed 1.38 percent per year, and
12 which shall be paid to and retained by the Depart-
13 ment.

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

16 (A) shall include such other terms as the
17 Department may fix; and

18 (B) shall be subject to the following re-
19 strictions and limitations:

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

1 (aa) 100 percent of the private
2 capital of such company; or

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

4 (II) The maximum amount of out-
5 standing leverage made available to 2 or
6 more ownership investment companies li-
7 censed under section 4(c) that are com-
8 monly controlled (as determined by the
9 Secretary) and not under capital impair-
10 ment may not exceed \$1,000,000,000.

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

13 (iii) The maximum amount of out-
14 standing leverage made available under the
15 facility established under section 3 to any
16 1 Protégé OIC may not to exceed the less-
17 er of—

18 (I) 100 percent of the private
19 capital of the Protégé OIC; or

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

21 (iv)(I) In calculating the outstanding
22 leverage of a company for the purposes of
23 subclauses (I) and (II) of clause (i), the
24 Secretary shall not include the amount of
25 the cost basis of any covered investment

made by the ownership investment company in a covered business concern that—

(aa) conducts in the United States research and development, engineering, or production activities necessary or incidental to manufacturing;

(bb) operates in a critical industry or critical technology area identified by the Secretary to be vital to maintaining the national or economic security of the United States; and

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

(II) The exclusion of amounts in subclause (I) shall not exceed a total of \$75,000,000 or 25 percent of private capital of such company, whichever is less.

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

(v) Nothing in this paragraph shall prevent licensees with 1 or more small

1 business investment companies licensed
2 under section 301(c) of the Small Business
3 Investment Act of 1958 (15 U.S.C. 681)
4 under common control (as determined by
5 the Secretary), including licensees whose
6 small business investment companies have
7 received the maximum amount of leverage
8 in sections 303(b)(2)(A) or 303(b)(2)(B)
9 of that Act, from receiving the maximum
10 amount of leverage in clause (i).

11 (c) THIRD-PARTY DEBT.—The Secretary—

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

16 (2) shall permit any licensee to incur third-
17 party debt only on such terms and subject to such
18 conditions as may be established by the Secretary,
19 by regulation or otherwise.

20 (d) CAPITAL IMPAIRMENT.—Before approving any
21 application for leverage submitted by a licensee under this
22 Act, the Secretary—

23 (1) shall determine that the private capital of
24 the licensee meets the requirements of section 6(a);
25 and

1 (2) shall determine, taking into account the na-
2 ture of the assets of the licensee, the amount and
3 terms of any third-party debt owed by such licensee,
4 and any other factors determined to be relevant by
5 the Secretary, that the private capital of the licensee
6 has not been impaired to such an extent that the
7 issuance of additional leverage would create or oth-
8 erwise contribute to an unreasonable risk of default
9 or loss to the Federal Government.

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

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

18 (2) The balance of 2 percent (or 3 percent if no
19 commitment has been entered into by the Depart-
20 ment) on the date on which the leverage is drawn by
21 the licensee.

22 (f) CALCULATION OF SUBSIDY RATE.—All fees and
23 interest received and retained by the Department under
24 this section shall be included in the calculations made by
25 the Director of the Office of Management and Budget to

1 offset the cost (as that term is defined in section 502 of
2 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))
3 to the Department of guaranteeing debentures under this
4 Act.

5 **SEC. 8. PROVISION OF INVESTMENT CAPITAL FOR COV-**
6 **ERED BUSINESS CONCERNS.**

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

14 (b) REQUIREMENT.—Before any capital described in
15 subsection (a) is provided to a covered business concern
16 under this section—

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

23 (2) except as provided in regulations issued by
24 the Secretary, such the covered business concern
25 shall agree that the covered business concern will

1 not thereafter incur any indebtedness without first
2 securing the approval of the ownership investment
3 company and giving the ownership investment com-
4 pany the first opportunity to finance such indebted-
5 ness.

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

11 (d) INTEREST.—The maximum rate of interest for
12 the share of an ownership investment company of any loan
13 made under this section shall be determined by the Sec-
14 retary—

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

23 (2) in making the initial determinations on the
24 maximum rate of interest under this subsection fol-
25 lowing the enactment of this Act, the Secretary shall

1 consult the regulations promulgated by the Adminis-
2 trator of the Small Business Administration on the
3 maximum rate of interest for loans and debt securi-
4 ties in accordance with section 305 of the Small
5 Business Investment Act of 1958 (15 U.S.C. 685).

6 (e) MATURITY.—

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

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

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

20 **SEC. 9. PORTFOLIO DIVERSIFICATION.**

21 If any ownership investment company obtains financ-
22 ing from the Secretary under this Act and such financing
23 remains outstanding, the aggregate amount of securities
24 acquired and for which commitments may be issued by
25 the ownership investment company under this Act for any

1 single covered business concern shall not, without the ap-
2 proval of the Secretary, exceed 10 percent of the sum of—

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

4 (2) the total amount of leverage projected by
5 the ownership investment company in the business
6 plan of the ownership investment company that was
7 approved by the Secretary at the time of the grant
8 of the license of the ownership investment company.

9 **SEC. 10. EXEMPTIONS.**

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

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

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

1 **SEC. 11. LEVERAGE REQUIREMENTS.**

2 No leverage shall be committed by the Department
3 under this Act to any licensee unless the managers of such
4 licensee—

5 (1) certify to the Department the names of any
6 attorneys, agents, or other persons engaged by or on
7 behalf of such licensee for the purpose of expediting
8 applications made to the Department for assistance
9 of any sort, and the fees paid or to be paid to any
10 such persons; and

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

24 **SEC. 12. REPORTING.**

25 (a) IN GENERAL.—Not later than 1 year after the
26 date of enactment of this Act, and each year thereafter,

1 the Secretary shall submit to Congress a full and detailed
2 account of the operations of the Department under this
3 Act, including the amount of losses sustained by the Gov-
4 ernment as a result of such operations during the pre-
5 ceding fiscal year, together with an estimate of the total
6 losses that the Government can reasonably expect to incur
7 as a result of such operations during the current fiscal
8 year.

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

12 (1) The plans of the Department to insure the
13 provision of ownership investment company financ-
14 ing and licensing to all areas of the country and to
15 all covered business concerns, including steps taken
16 to accomplish the same.

17 (2) The plans of the Department to support
18 States that seek to increase the number of licensees
19 in the State.

20 (3) Steps taken by the Department to maximize
21 recoupment of Government funds incident to the in-
22 auguration and administration of the ownership in-
23 vestment company program and to insure compli-
24 ance with statutory and regulatory standards relat-
25 ing to the ownership investment company program.

1 (4) Recommendations to the Department of the
2 Treasury with respect to additional tax incentives to
3 improve and facilitate the operations of ownership
4 investment companies and to encourage the use of
5 the financing facilities of ownership investment com-
6 panies by covered business concerns.

7 (5) A report from the Securities and Exchange
8 Commission enumerating actions undertaken by the
9 Securities and Exchange Commission to—

10 (A) simplify and minimize the regulatory
11 requirements governing ownership investment
12 companies under the Federal securities laws;
13 and

14 (B) eliminate overlapping regulation and
15 jurisdiction as between the Securities and Ex-
16 change Commission, the Department, and other
17 agencies of the executive branch.

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

1 (7) The number of ownership investment com-
2 panies the Department licensed (including Protégé
3 OICs), the number of licensees that have been
4 placed in liquidation, and the number of licensees
5 that have surrendered their licenses during the year
6 ending on the date the report is submitted, identi-
7 fying the amount of leverage each received during
8 that period.

9 (8) The amount of leverage that ownership in-
10 vestment companies (including Protégé OICs) re-
11 ceived during the year ending on the date the report
12 is submitted.

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

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

22 (11) A summary of employee stock ownership
23 plans created by an ownership investment company
24 (including Protégé OICs), including—

1 (A) the total number of active plan partici-
2 pants;

3 (B) the total number of employees of the
4 covered business concerns with such employee
5 stock ownership plans;

6 (C) the total value of employer securities,
7 as determined by the independent appraisers
8 hired by the independent trustee of each em-
9 ployee stock ownership plan;

10 (D) the total plan assets;

11 (E) the total contributions during the plan
12 year;

13 (F) the total distributions during the plan
14 year;

15 (G) the median account asset balance; and

16 (H) demographic information of plan par-
17 ticipants, disaggregated by race, gender, and
18 State, to the extent available.

19 (12) A summary of eligible worker-owned co-
20 operatives created by ownership investment compa-
21 nies (including Protégé OICs), including—

22 (A) the number of member-owners;

23 (B) the total number of employees of the
24 covered business concern with such eligible
25 worker-owned cooperatives;

- 1 (C) the total value of employer securities;
- 2 (D) the assets of all membership accounts;
- 3 (E) the median membership account bal-
- 4 ance; and
- 5 (F) demographic information of member-
- 6 ship base, disaggregated by race, gender, and
- 7 State, to the extent available.

8 **SEC. 13. REVOCATION AND SUSPENSION OF LICENSES;**
9 **CEASE AND DESIST ORDERS.**

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

12 (1) for any false statement knowingly made in
13 any written statement required under this Act, or
14 under any regulation issued under this Act by the
15 Secretary;

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

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

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

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

7 (b) ORDER TO CEASE AND DESIST.—

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

16 (2) ACTIONS REQUIRED.—The Secretary may
17 order such licensee or other person to take such ac-
18 tion or to refrain from such action as the Secretary
19 deems necessary to insure compliance with the Act
20 and the regulations implementing this Act.

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

25 (c) ORDERS TO SHOW CAUSE.—

1 (1) ISSUANCE.—Before revoking or suspending
2 a license pursuant to subsection (a) or issuing a
3 cease and desist order pursuant to subsection (b),
4 the Secretary shall serve upon the licensee and any
5 other person involved an order to show cause why an
6 order revoking or suspending the license or a cease
7 and desist order should not be issued.

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

10 (A) contain a statement of the matters of
11 fact and law asserted by the Department and
12 the legal authority and jurisdiction under which
13 a hearing is to be held; and

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

17 (3) STATEMENT OF FINDINGS.—If after hear-
18 ing, or a waiver thereof, the Secretary determines on
19 the record that an order revoking or suspending the
20 license or a cease and desist order should issue, the
21 Secretary shall—

22 (A) promptly issue such order, which shall
23 include a statement of the findings of the Sec-
24 retary and the grounds and reasons therefor
25 and specify the effective date of the order; and

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

3 (d) WITNESSES.—

4 (1) SUBPOENA AUTHORITY.—The Secretary
5 may require by subpoena the attendance and testi-
6 mony of witnesses and the production of all books,
7 papers, and documents relating to the hearing from
8 any place in the United States.

9 (2) PAYMENT.—Any witness summoned before
10 the Department shall be paid by the party at whose
11 instance the witness was called the same fees and
12 mileage that are paid witnesses in the courts of the
13 United States.

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

20 (e) APPEALS.—

21 (1) FILING.—

22 (A) IN GENERAL.—An order issued by the
23 Secretary under this section shall be final and
24 conclusive unless within 30 days after the serv-
25 ice thereof the licensee, or other person against

1 whom an order is issued, appeals to the United
2 States court of appeals for the circuit in which
3 such licensee has its principal place of business
4 by filing with the clerk of such court a petition
5 praying that the Department's order be set
6 aside or modified in the manner stated in the
7 petition.

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

13 (2) DELIVERY.—The clerk of the court shall
14 immediately cause a copy of the petition described in
15 paragraph (1) to be delivered to the Secretary, and,
16 upon receipt, the Secretary shall certify and file in
17 the court a transcript of the record upon which the
18 order complained of was entered.

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

24 (4) OPERATION OF ORDER.—The filing of a pe-
25 tition for review under this subsection shall not of

1 itself stay or suspend the operation of the order of
2 the Department, but the court of appeals in its dis-
3 cretion may restrain or suspend, in whole or in part,
4 the operation of the order pending the final hearing
5 and determination of the petition.

6 (5) DISPOSITION.—

7 (A) IN GENERAL.—The court may affirm,
8 modify, or set aside the order of the Secretary
9 under this section.

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

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

18 (i) may modify the findings as to the
19 facts of the Department, or make new
20 findings, by reason of the additional evi-
21 dence so taken; and

22 (ii) shall file modified or new findings
23 and the amendments, if any, of the order,
24 with the record of such additional evidence.

1 (D) OBJECTIONS.—No objection to an
2 order of the Secretary shall be considered by
3 the court unless such objection was urged be-
4 fore the Department or, if it was not so urged,
5 unless there were reasonable grounds for failure
6 to do so.

7 (E) REVIEW.—The judgment and decree of
8 the court affirming, modifying, or setting aside
9 any such order of the Secretary shall be subject
10 only to review by the Supreme Court of the
11 United States upon certification or certiorari as
12 provided in section 1254 of title 28, United
13 States Code.

14 (f) ENFORCEMENT.—

15 (1) FAILURE TO OBEY.—If any licensee or
16 other person against which or against whom an
17 order is issued under this section fails to obey the
18 order, the Secretary—

19 (A) may apply to the United States court
20 of appeals, within the circuit where the licensee
21 has its principal place of business, for the en-
22 forcement of the order; and

23 (B) shall file a transcript of the record
24 upon which the order complained of was en-
25 tered.

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

4 (3) EVIDENCE.—The evidence to be considered,
5 the procedure to be followed, and the jurisdiction of
6 the court shall be the same as is provided in sub-
7 section (e) for applications to set aside or modify or-
8 ders.

9 **SEC. 14. EXAMINATIONS AND INVESTIGATIONS.**

10 (a) INVESTIGATIONS.—

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

19 (2) STATEMENTS.—The Secretary shall permit
20 any person to file with it a statement in writing,
21 under oath or otherwise as the Secretary shall deter-
22 mine, as to all the facts and circumstances con-
23 cerning the matter to be investigated.

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

4 (A) administer oaths and affirmations;

5 (B) subpoena witnesses;

6 (C) compel the attendance of witnesses;

7 (D) take evidence; and

8 (E) require the production of any books,
9 papers, and documents that are relevant to the
10 inquiry.

11 (4) ATTENDANCE AND PRODUCTION.—

12 (A) IN GENERAL.—Attendance of wit-
13 nesses and the production of any such records
14 under this section may be required from any
15 place in the United States.

16 (B) FAILURE TO OBEY.—In case of contu-
17 macy by, or refusal to obey a subpoena issued
18 to, any person, including a licensee, the Sec-
19 retary may invoke the aid of any court of the
20 United States within the jurisdiction of which
21 such investigation or proceeding is carried on,
22 or where such person resides or carries on busi-
23 ness, in requiring the attendance and testimony
24 of witnesses and the production of books, pa-
25 pers, and documents, and such court may issue

1 an order requiring such person to appear before
2 the Department, thereto produce records, if so
3 ordered, or to give testimony touching the mat-
4 ter under investigation.

5 (C) ENFORCEMENT.—Any failure to obey
6 such order of the court may be punished by
7 such court as a contempt thereof.

8 (D) SERVICE OF PROCESS.—All process in
9 any such case may be served in the judicial dis-
10 trict whereof such person is an inhabitant or
11 wherever he may be found.

12 (b) EXAMINATIONS.—

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

23 (2) FEES.—Fees collected under this subsection
24 shall be deposited in the account for salaries and ex-
25 penses of the Department, and are authorized to be

1 appropriated solely to cover the costs of examina-
2 tions and other oversight activities under this Act.

3 (3) REPORTS.—Every licensee shall make such
4 reports to the Secretary at such times and in such
5 form as the Secretary may require, except that the
6 Secretary is authorized to exempt from making such
7 reports any such licensee that is registered under
8 the Investment Company Act of 1940 (15 U.S.C.
9 80a–1 et seq.) to the extent necessary to avoid dupli-
10 cation in reporting requirements.

11 (4) REQUIRED INFORMATION.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), each licensee shall be exam-
14 ined not less frequently than once every 2 years
15 in such detail so as to determine whether or
16 not—

17 (i) the licensee has engaged solely in
18 lawful activities and those contemplated by
19 this Act;

20 (ii) the licensee has engaged in pro-
21 hibited conflicts of interest under section
22 16;

23 (iii) the licensee has acquired or exer-
24 cised illegal control of a covered business
25 concern;

1 (iv) the licensee has made investments
2 in covered businesses for not less than 1
3 year;

4 (v) the licensee has adhered to port-
5 folio diversification limits as stated under
6 section 9;

7 (vi) the licensee has engaged in re-
8 lending, foreign investments, or passive in-
9 vestments;

10 (vii) the licensee has charged an inter-
11 est rate in excess of the maximum per-
12 mitted by law; or

13 (viii) the licensee has adhered to the
14 requirements to make covered investments.

15 (B) WAIVER.—The Secretary may waive
16 any examination required under subparagraph
17 (A)—

18 (i) for not more than 1 year if, in the
19 discretion of the Secretary, the Secretary
20 determines such a delay would be appro-
21 priate, based on the amount of debentures
22 being issued by the licensee and the repay-
23 ment record of the licensee, the prior oper-
24 ating experience of the licensee, the con-
25 tents and results of the last examination

1 and the management expertise of the li-
2 censee; or

3 (ii) if it is the examination of a li-
4 censee whose operations have been sus-
5 pended while the licensee is involved in liti-
6 gation or is in receivership.

7 (c) VALUATIONS.—

8 (1) FREQUENCY OF VALUATIONS.—

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

17 (B) MATERIAL ADVERSE CHANGES.—Not
18 later than 30 days after the end of a fiscal
19 quarter of a licensee during which a material
20 adverse change in the aggregate valuation of
21 the loans and investments or operations of the
22 licensee occurs, the licensee shall notify the Sec-
23 retary in writing of the nature and extent of
24 that change.

25 (C) INDEPENDENT CERTIFICATION.—

1 (i) IN GENERAL.—Not less frequently
2 than once during each fiscal year, each li-
3 censee shall submit to the Secretary the fi-
4 nancial statements of the licensee, audited
5 by an independent certified public account-
6 ant approved by the Secretary.

7 (ii) AUDIT REQUIREMENTS.—Each
8 audit conducted under clause (i) shall in-
9 clude—

10 (I) a review of the procedures
11 and documentation used by the li-
12 censee in preparing the valuations re-
13 quired by this section; and

14 (II) a statement by the inde-
15 pendent certified public accountant
16 that such valuations were prepared in
17 conformity with the valuation criteria
18 applicable to the licensee established
19 in accordance with paragraph (2).

20 (2) VALUATION CRITERIA.—Each valuation
21 submitted under this subsection shall be prepared by
22 the licensee in accordance with valuation criteria,
23 which shall—

24 (A) be established or approved by the Sec-
25 retary; and

1 (B) include appropriate safeguards to en-
2 sure that the noncash assets of a licensee are
3 not overvalued.

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

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

21 (b) EXCLUSIVE JURISDICTION.—In any proceeding
22 under subsection (a), the court as a court of equity—

23 (1) may, to such extent as the court deems nec-
24 essary, take exclusive jurisdiction of the licensee or

1 licensees and the assets thereof, wherever located;
2 and

3 (2) shall have jurisdiction in any such pro-
4 ceeding to appoint a trustee or receiver to hold or
5 administer under the direction of the court the as-
6 sets so possessed.

7 (c) TRUSTEE AND RECEIVERSHIP.—

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

10 (2) APPOINTMENT.—Upon request by the Sec-
11 retary, the court may appoint the Secretary to act
12 in such capacity unless the court deems such ap-
13 pointment inequitable or otherwise inappropriate by
14 reason of the special circumstances involved.

15 **SEC. 16. CONFLICTS OF INTEREST.**

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

1 an interest, direct or indirect, financial or otherwise, in
2 any licensee.

3 (b) PUBLIC DISCLOSURE.—Regulations adopted
4 under subsection (a) shall include appropriate require-
5 ments for public disclosure necessary to the purposes of
6 this section.

7 (c) CONSULTATION WITH EXISTING REGULA-
8 TIONS.—In making any initial determination relating to
9 a regulation adopted under subsection (a), the Secretary
10 shall consult the regulations promulgated by the Adminis-
11 trator of the Small Business Administration on financing
12 which constitute conflicts of interest in accordance with
13 section 312 of the Small Business Investment Act of 1958
14 (15 U.S.C. 687d).

15 (d) REGULATIONS.—The Secretary shall promulgate
16 regulations under this section in accordance with the im-
17 plementation milestones as set forth in section 3(l) of this
18 Act.

19 **SEC. 17. REMOVAL OR SUSPENSION OF MANAGEMENT OF-**
20 **FICIALS.**

21 (a) DEFINITION OF MANAGEMENT OFFICIAL.—In
22 this section, the term “management official” means an of-
23 ficer, director, general partner, manager, employee, agent,
24 or other participant in the management or conduct of the
25 affairs of a licensee.

1 (b) REMOVAL OF MANAGEMENT OFFICIALS.—

2 (1) NOTICE OF REMOVAL.—The Secretary may
3 serve upon any management official a written notice
4 of its intention to remove that management official
5 whenever, in the opinion of the Secretary—

6 (A) such management official—

7 (i) has willfully and knowingly com-
8 mitted any substantial violation of—

9 (I) this Act;

10 (II) any regulation issued under
11 this Act; or

12 (III) a cease-and-desist order
13 which has become final; or

14 (ii) has willfully and knowingly com-
15 mitted or engaged in any act, omission, or
16 practice which constitutes a substantial
17 breach of a fiduciary duty of that person
18 as a management official; and

19 (B) the violation or breach of fiduciary
20 duty is one involving personal dishonesty on the
21 part of such management official.

22 (2) CONTENTS OF NOTICE.—A notice of inten-
23 tion to remove a management official, as provided in
24 paragraph (1), shall contain a statement of the facts

1 constituting grounds therefor, and shall fix a time
2 and place at which a hearing will be held thereon.

3 (3) HEARINGS.—

4 (A) TIMING.—A hearing described in para-
5 graph (2) shall be fixed for a date not earlier
6 than 30 days nor later than 60 days after the
7 date of service of notice of the hearing, unless
8 an earlier or a later date is set by the Secretary
9 at the request of—

10 (i) the management official, and for
11 good cause shown; or

12 (ii) the Attorney General of the
13 United States.

14 (B) CONSENT.—Unless the management
15 official shall appear at a hearing described in
16 this paragraph in person or by a duly author-
17 ized representative, that management official
18 shall be deemed to have consented to the
19 issuance of an order of removal under para-
20 graph (4)(A).

21 (4) ISSUANCE OF ORDER OF REMOVAL.—

22 (A) IN GENERAL.—In the event of consent
23 under paragraph (3)(B), or if upon the record
24 made at a hearing described in this subsection,
25 the Secretary finds that any of the grounds

1 specified in the notice of removal has been es-
2 tablished, the Secretary may issue such orders
3 of removal from office as the Secretary deems
4 appropriate.

5 (B) EFFECTIVENESS.—An order under
6 subparagraph (A) shall—

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

15 (ii) remain effective and enforceable,
16 except to such extent as it is stayed, modi-
17 fied, terminated, or set aside by action of
18 the Secretary or a reviewing court in ac-
19 cordance with this section.

20 (c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICI-
21 PATION.—

22 (1) IN GENERAL.—The Secretary may, if the
23 Secretary deems it necessary for the protection of
24 the licensee or the interests of the Department, sus-
25 pend from office or prohibit from further participa-

1 tion in any manner in the management or conduct
2 of the affairs of the licensee, or both, any manage-
3 ment official referred to in subsection (b)(1), by
4 written notice to such effect served upon the man-
5 agement official.

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

8 (A) shall become effective upon service of
9 notice under paragraph (1); and

10 (B) unless stayed by a court in proceedings
11 authorized by paragraph (3), shall remain in ef-
12 fect—

13 (i) pending the completion of the ad-
14 ministrative proceedings pursuant to a no-
15 tice of intention to remove served under
16 subsection (b); and

17 (ii) until such time as the Secretary
18 shall dismiss the charges specified in the
19 notice, or, if an order of removal or prohi-
20 bition is issued against the management
21 official, until the effective date of any such
22 order.

23 (3) JUDICIAL REVIEW.—Not later than 10 days
24 after any management official has been suspended
25 from office or prohibited from participation in the

1 management or conduct of the affairs of a licensee,
2 or both, under paragraph (1), that management offi-
3 cial may apply to the United States District Court
4 for the judicial district in which the home office of
5 the licensee is located, or the United States District
6 Court for the District of Columbia, for a stay of the
7 suspension or prohibition pending the completion of
8 the administrative proceedings pursuant to a notice
9 of intent to remove served upon the management of-
10 ficial under subsection (b), and such court shall have
11 jurisdiction to stay such action.

12 (d) AUTHORITY TO SUSPEND ON CRIMINAL
13 CHARGES.—

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

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

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

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

24 (e) NOTIFICATION TO LICENSEES.—Copies of each
25 notice required to be served on a management official

1 under this section shall also be served upon the interested
2 licensee.

3 (f) PROCEDURAL PROVISIONS; JUDICIAL REVIEW.—

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

6 (A) held in the Federal judicial district or
7 in the territory in which the principal office of
8 the licensee is located, unless the party afforded
9 the hearing consents to another place; and

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

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

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

1 (A) at any time, upon such notice, and in
2 such manner as the Secretary deems proper,
3 unless a petition for review is timely filed in a
4 court of appeals of the United States, as pro-
5 vided in paragraph (4)(B), and thereafter until
6 the record in the proceeding has been filed in
7 accordance with paragraph (4)(C); and

8 (B) upon such filing of the record, with
9 permission of the court.

10 (4) JUDICIAL REVIEW.—

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

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

1 petition praying that the order of the Secretary
2 be modified, terminated, or set aside.

3 (C) NOTIFICATION TO DEPARTMENT.—A
4 copy of a petition filed under subparagraph (B)
5 shall be forthwith transmitted by the clerk of
6 the court to the Secretary, and thereupon the
7 Secretary shall file in the court the record in
8 the proceeding, as provided in section 2112 of
9 title 28, United States Code.

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

12 (i) the court shall have jurisdiction,
13 which, upon the filing of the record under
14 subparagraph (C), shall be exclusive, to af-
15 firm, modify, terminate, or set aside, in
16 whole or in part, the order of the Sec-
17 retary;

18 (ii) review of such proceedings shall
19 be had as provided in chapter 7 of title 5,
20 United States Code; and

21 (iii) the judgment and decree of the
22 court shall be final, except that the judg-
23 ment and decree shall be subject to review
24 by the Supreme Court of the United States

1 upon certiorari, as provided in section
2 1254 of title 28, United States Code.

3 (E) JUDICIAL REVIEW NOT A STAY.—The
4 commencement of proceedings for judicial re-
5 view under this paragraph shall not, unless spe-
6 cifically ordered by the court, operate as a stay
7 of any order issued by the Secretary under this
8 section.

9 **SEC. 18. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS,**
10 **DIRECTORS, EMPLOYEES, OR AGENTS;**
11 **BREACH OF FIDUCIARY DUTY.**

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

24 (b) UNLAWFUL ACTS.—

1 (1) PROHIBITION.—It shall be unlawful for any
2 officer, director, employee, agent, or other partici-
3 pant in the management or conduct of the affairs of
4 a licensee to engage in any act or practice, or to
5 omit any act, in breach of his fiduciary duty as such
6 officer, director, employee, agent, or participant, if,
7 as a result thereof, the licensee has suffered or is in
8 imminent danger of suffering financial loss or other
9 damage.

10 (2) SPECIFIC ACTS AND OMISSIONS.—Except
11 with the written consent of the Secretary, it shall be
12 unlawful—

13 (A) for any person hereafter to take office
14 as an officer, director, or employee of a licensee,
15 or to become an agent or participant in the con-
16 duct of the affairs or management of a licensee,
17 if—

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

21 (ii) the person has been found civilly
22 liable in damages, or has been permanently
23 or temporarily enjoined by an order, judg-
24 ment, or decree of a court of competent ju-

1 jurisdiction, by reason of any act or practice
2 involving fraud or breach of trust; or

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

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

8 (ii) the person is hereafter found civ-
9 ily liable in damages or is permanently or
10 temporarily enjoined by an order, judg-
11 ment, or decree of a court of competent ju-
12 risdiction, by reason of any act or practice
13 involving fraud or breach of trust.

14 **SEC. 19. PENALTIES AND FORFEITURES.**

15 (a) PENALTIES.—

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

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

5 (b) ENFORCEMENT.—The Secretary may—

6 (1) by rules and regulations, or upon applica-
7 tion of an interested party, at any time previous to
8 such failure, by order, after notice and opportunity
9 for hearing, exempt in whole or in part, any licensee
10 from the provisions of subsection (a) of this section,
11 upon such terms and conditions and for such period
12 of time as the Secretary deems necessary and appro-
13 priate, if the Secretary finds that such action is not
14 inconsistent with the public interest or the protec-
15 tion of the Department; and

16 (2) for the purposes of this section make any
17 alternative requirements appropriate to the situa-
18 tion.

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

20 Any suit or action brought under section 13, 15, 17,
21 19, or 23 by the Department at law or in equity to enforce
22 any liability or duty created by, or to enjoin any violation
23 of this Act, or any rule, regulation, or order promulgated
24 thereunder, shall be brought in the district wherein the
25 licensee maintains its principal office, and process in such

1 cases may be served in any district in which the defendant
2 maintains its principal office or transacts business, or
3 wherever the defendant may be found.

4 **SEC. 21. ISSUANCE AND GUARANTEE OF TRUST CERTIFI-**
5 **CATES.**

6 (a) **AUTHORITY TO ISSUE TRUST CERTIFICATES.**—
7 The Secretary may issue trust certificates representing
8 ownership of all or a fractional part of debentures issued
9 by licensees and guaranteed by the Department under this
10 Act, provided that the trust certificates shall be based on
11 and backed by a trust or pool approved by the Secretary
12 and composed solely of guaranteed debentures.

13 (b) **GUARANTEE AUTHORITY.**—

14 (1) **IN GENERAL.**—The Secretary may, upon
15 such terms and conditions as are deemed appro-
16 priate, to guarantee the timely payment of the prin-
17 cipal of and interest on trust certificates issued by
18 the Department or its agent for purposes of this sec-
19 tion.

20 (2) **LIMITATION.**—Such guarantee shall be lim-
21 ited to the extent of principal and interest on the
22 guaranteed debentures which compose the trust or
23 pool.

24 (3) **REDUCTION OF GUARANTEE.**—In the event
25 that a debenture in such trust or pool is prepaid, ei-

1 ther voluntarily or involuntarily, or in the event of
2 default of a debenture, the guarantee of timely pay-
3 ment of principal and interest on the trust certifi-
4 cates shall be reduced in proportion to the amount
5 of principal and interest such prepaid debenture and
6 priority payments represent in the trust or pool.

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

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

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

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

24 (e) RIGHTS OF THE DEPARTMENT.—

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

5 (2) OWNERSHIP RIGHTS.—No State or local
6 law, and no Federal law, shall preclude or limit the
7 exercise by the Secretary of the ownership rights of
8 the Secretary in the debentures residing in a trust
9 or pool against which trust certificates are issued.

10 (f) RESPONSIBILITIES.—

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

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

1 amounts as the Secretary determines to be necessary
2 to fully protect the interests of the Government.

3 (3) DISCLOSURES.—Before any sale of a trust
4 certificate, the Secretary shall require the seller to
5 disclose to a purchaser of a trust certificate issued
6 pursuant to this section, information on the terms,
7 conditions, and yield of such instrument.

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

12 (5) RULE OF CONSTRUCTION.—Nothing in this
13 subsection shall prohibit the use of a book entry or
14 other electronic form of registration for trust certifi-
15 cates.

16 **SEC. 22. PERIODIC ISSUANCE OF GUARANTEES AND TRUST**
17 **CERTIFICATES.**

18 The Secretary shall issue guarantees under section
19 7 and trust certificates under section 21 at periodic inter-
20 vals of not less than every 12 months and shall do so at
21 such shorter intervals as the Secretary deems appropriate,
22 taking into consideration the amount and number of such
23 guarantees or trust certificates.

1 **SEC. 23. MISCELLANEOUS.**

2 (a) COOPERATION WITH BANKS, INVESTORS, AND
3 LENDERS.—Whenever practicable, the operations of an
4 ownership investment company, including the generation
5 of business, may be undertaken in cooperation with banks
6 or other investors or lenders, incorporated or unincor-
7 porated, and any servicing or initial investigation required
8 for loans or acquisitions of securities by the company
9 under the provisions of this Act may be handled through
10 such banks or other investors or lenders on a fee basis.
11 Any ownership investment company may receive fees for
12 services rendered to such banks and other investors and
13 lenders.

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

18 (c) DISSOLUTION OR FORFEITURE OF RIGHTS.—
19 Should any ownership investment company violate or fail
20 to comply with any of the provisions of this Act or of regu-
21 lations prescribed hereunder, all of the rights, privileges,
22 and franchises derived therefrom may thereby be forfeited.
23 Before any such ownership investment company shall be
24 declared dissolved, or its rights, privileges, and franchises
25 forfeited, any noncompliance with or violation of this Act
26 shall be determined and adjudged by a court of the United

1 States of competent jurisdiction in a suit brought for that
2 purpose in the district, territory, or other place subject
3 to the jurisdiction of the United States, in which the prin-
4 cipal office of the ownership investment company is lo-
5 cated. Any such suit shall be brought by the United States
6 at the instance of the Secretary or the Attorney General.

7 (d) LIABILITY.—Except as expressly provided other-
8 wise in this Act, nothing in this Act or in any other provi-
9 sion of law shall be deemed to impose any liability on the
10 United States with respect to any obligations entered into,
11 or stocks issued, or commitments made, by any company
12 operating under the provisions of this Act.

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