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Introduced by
Senator Edgardo J. Angara

EXPLANATORY NOTE

The Special Purpose Vehicle (SPV) Act of 2002 (Republic Act No. 9182) was intended to help banks in the disposal of their non performing assets (NPAs) by granting tax exemptions and reduced registration and transfer fees. The SPV Act was expected to strengthen the balance sheets of the financial institutions and restore their capability to perform their role as mobilizers of savings and investments for the country's growth and development.

To date, however, the benefits under the SPV Act have not been maximized. The financial system is still burdened by NPAs amounting to about P511.6 billion as of March 2004 of which P274B is in nonperforming loans. The sluggish offloading of the NPAs by financial institutions is caused by several reasons, such as: (1) the delay in the issuance of the revenue regulation dealing with the tax aspect of the SPV Act; (2) the complex legal, accounting, tax and other issues involved in the implementation of the SPV Act; and (3) the huge magnitude of NPAs in the banking system which would require significant amount of time for proper disposal.

With the period for the availment of the benefits under the SPV Act coming to an end, the offloading of NPAs is finally gaining a strong momentum. As of September 18, 2004, which is the deadline for registration of SPVs with the Securities and Exchange Commission (SEC), thirty-six (36) SPVs have been registered making them eligible to acquire NPAs until April 8, 2005. In the early part of October, the BSP was processing nineteen (19) applications for certificates of eligibility with an aggregate amount of P34.4 billion of NPAs. These are good indications that banks are pursuing serious efforts to unload their NPAs under the SPV Act.

This bill proposes to extend for five (5) more years the deadlines for the establishment of an SPV and for the availment of the tax exemptions and fee privileges in the sale or transfer of NPAs. The extension will allow the financial system to fully and properly realize the objectives for which the SPV Act was enacted. For the same reason, the bill also proposes to include all assets that have become nonperforming beyond June 30, 2002. In view of this, the undersigned strongly recommends the immediate passage of this bill.


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under this section shall likewise be extended to any individual in accordance with the IRR: *Provided, That:*

- (i) The transaction is limited to a single family residential unit ROPOA or NPL secured by real estate mortgage on a residential unit;
- (ii) There shall only be one transaction consisting of one residential unit per individual; and
- (iii) The **SEVEN-YEAR** [two-year] transfer and the five-year entitlement period granted to NPA shall also apply to said single family residential unit.

SECTION 3. Privileges of Participating FIs – Section 17 (a) of Republic Act No. 9182 is hereby amended to read as follows:

*Section 17. Privileges of Participation FIs. – (a) Any loss that is incurred by the financial institutions as a result of the transfer of NPAs shall be treated as ordinary loss: *Provided, That* the accrued interest and penalties shall not be included as loss on said loss carry over from operations subject to the provisions of the National Internal Revenue Code of 1997 on net operating loss carry-over (NOLCO), except that the loss incurred by the FI from the transfer of NPAs within the **SEVEN-YEAR** [two-year] period from the effectivity of the IRR may be carried over for a period of five (5) consecutive taxable years immediately following the year of such loss: *Provided, further,* That for the purpose of corporate gain or loss the carry-over shall be subject to pertinent laws: *Provided, finally,* That the tax savings derived by FIs from the NOLCO shall not be made available for dividend declaration but shall be retained as a form of capital build-up.*

SECTION 4. Applicability Clause. – Section 26 of Republic Act No. 9182 is hereby amended, by including assets that have become nonperforming beyond June 30, 2002, which shall read as follows:

*Section 26. Applicability Clause. – The provisions of this Act shall be applicable to assets that have become non-performing **BEFORE OR WITHIN THE SEVEN-YEAR PERIOD MENTIONED UNDER SECTIONS 15 AND 17 HEREOF** [as of June 30, 2002].*

SECTION 5. *Separability Clause.* - If any provision or section of this Act or the application thereof to any person or circumstance is held to be invalid, the other provisions or sections of this Act, and the application of such provision or section to other persons or circumstances, shall not be affected thereby.

SECTION 6. *Repealing Clause.* Any law, presidential decree or issuance, executive order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SECTION 7. *Effectivity* - This Act shall take effect fifteen (15) days following its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved.