ment of the first grant under the Efficiency Program.

(d) Small business telecommuting

(1) Pilot program

(A) In general

The Administrator shall conduct, in not more than 5 of the regions of the Administration, a pilot program to provide information regarding telecommuting to employers that are small business concerns and to encourage such employers to offer telecommuting options to employees.

(B) Special outreach to individuals with disabilities

In carrying out the Telecommuting Pilot Program, the Administrator shall make a concerted effort to provide information to—

(i) small business concerns owned by or employing individuals with disabilities, particularly veterans who are individuals with disabilities;

(ii) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities, including veterans who are individuals with disabilities; and

(iii) any group or organization, the primary purpose of which is to aid individuals with disabilities or veterans who are individuals with disabilities.

(C) Permissible activities

In carrying out the Telecommuting Pilot Program, the Administrator may—

(i) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;

(ii) conduct outreach—

(I) to small business concerns that are considering offering telecommuting options; and

(II) as provided in subparagraph (B); and

(iii) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(D) Selection of regions

In determining which regions will participate in the Telecommuting Pilot Program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

(2) Report to Congress

Not later than 2 years after the date on which funds are first appropriated to carry out this subsection, the Administrator shall transmit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the results of an evaluation of the Telecommuting Pilot Program and any recommendations regarding whether the pilot program, with or without modification, should be extended to include the participation of all regions of the Administration.

(3) Termination

The Telecommuting Pilot Program shall terminate 4 years after the date on which funds are first appropriated to carry out this subsection.

(4) Authorization of appropriations

There is authorized to be appropriated to the Administration $5,000,000 to carry out this subsection.

(Pub. L. 110–140, title XII, § 1203, Dec. 19, 2007, 121 Stat. 1766.)

CODIFICATION

Section is comprised of section 1203 of Pub. L. 110–140. Subsec. (e) of section 1203 of Pub. L. 110–140 amended section 638 of this title.

Section was enacted as part of the Energy Independence and Security Act of 2007, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 661. Congressional declaration of policy

It is declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided*, *however*, That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this chapter shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country. It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.

(Pub. L. 85–699, title I, § 102, Aug. 21, 1958, 72 Stat. 689; Pub. L. 102–366, title IV, § 416, Sept. 4, 1992, 106 Stat. 1019.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 85–699, which enacted this chapter, amended sections 77c, 77ddd, 80a–18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and section 352a of Title 12. Sections 212 and 213 of Title 18, as renumbered by Pub. L. 87–849, were subsequently repealed. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102–366 inserted at end ''It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–232, § 1, May 28, 2004, 118 Stat. 649, provided that:''This Act [amending section 697e of this title] may be cited as the 'Premier Certified Lenders Program Improvement Act of 2004'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–100, § 1, Dec. 21, 2001, 115 Stat. 966, provided that: ''This Act [amending sections 636, 683, 687d, 687e, and 697 of this title, section 1833a of Title 12, Banks and Banking, and section 1014 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 636, 683, and 697 of this title] may be cited as the 'Small Business Investment Company Amendments Act of 2001'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(8) [§ 1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653, provided that: ''This section [enacting part B of subchapter III of this chapter, amending section 683 of this title, section 109 of Title 11, Bankruptcy, and section 1464 of Title 12, Banks and Banking, and amending provisions set out as a note under section 631 of this title] may be cited as the 'New Markets Venture Capital Program Act of 2000'.''

Pub. L. 106–554, § 1(a)(9) [title III, § 301], Dec. 21, 2000, 114 Stat. 2763, 2763A–684, provided that: ''This title [enacting section 697g of this title, amending sections 695 to 697 and 697e of this title, enacting provisions set out as a note under section 697g of this title, and repealing provisions set out as a note under section 697e of this title] may be cited as the 'Certified Development Company Program Improvements Act of 2000'.''

Pub. L. 106–554, § 1(a)(9) [title IV, § 401], Dec. 21, 2000, 114 Stat. 2763, 2763A–690, provided that: ''This title [amending sections 662, 682, 683, and 687b of this title] may be cited as the 'Small Business Investment Corrections Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–9, § 1, Apr. 5, 1999, 113 Stat. 17, provided that: ''This Act [amending sections 662, 683, 687, and 687m of this title and provisions set out as notes under this section and section 631 of this title] may be cited as the 'Small Business Investment Improvement Act of 1999'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–403, title V, § 501, Oct. 22, 1994, 108 Stat. 4198, provided that: ''This title [enacting section 697f of this title and provisions set out as a note under section 697f of this title] may be cited as the 'Small Business Prepayment Penalty Relief Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Section 401 of title IV of Pub. L. 102–366 provided that: ''This Act [probably means ''This title'', amending this section and sections 662, 682, 683, 685 to 687, 687b, and 687*l* of this title, enacting provisions set out as notes under this section and sections 681 and 687b of this title, and amending provisions set out as a note under section 631 of this title] may be cited as the 'Small Business Equity Enhancement Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–590, title II, § 201, Nov. 3, 1988, 102 Stat. 3007, provided that: ''This title [amending sections 694b and 694c of this title and enacting provisions set out as notes under section 694b of this title] may be cited as the 'Preferred Surety Bond Guarantee Program Act of 1988'.''

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92–595, Oct. 27, 1972, 86 Stat. 1314, provided: ''That this Act [enacting sections 687i and 687j of this title and amending sections 80a–18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1972'.''

SHORT TITLE OF 1967 AMENDMENT

Section 201 of Pub. L. 90–104, title II, Oct. 11, 1967, 81 Stat. 269, provided that: ''This title [amending sections 681, 682, 683, 684, 686, 687, 687b, and 692 of this title] may be cited as the 'Small Business Investment Act Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–779, Nov. 6, 1966, 80 Stat. 1359, provided: ''That this Act [enacting sections 687e, 687f, 687g, and 687h of this title and amending sections 633, 671, 687, 687a, 687b, and 687c of this title, and sections 5315 and 5316 of Title 5, Government Organization and Employees] may be cited as the 'Small Business Investment Act Amendments of 1966'.''

SHORT TITLE OF 1964 AMENDMENT

Section 1 of Pub. L. 88–273, Feb. 28, 1964, 78 Stat. 146, provided: ''That this Act [enacting section 687d and amending sections 682, 686, and 687 of this title] may be cited as the 'Small Business Investment Act Amendments of 1963'.''

SHORT TITLE OF 1961 AMENDMENT

Section 1 of Pub. L. 87–341, Oct. 3, 1961, 75 Stat. 752, provided: ''That this Act [enacting sections 687a, 687b, and 687c of this title, amending sections 633, 662, 681, 683 to 687, and 696 of this title, and enacting provisions set out as notes under sections 631 and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1961'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–502, June 11, 1960, 74 Stat. 196, provided: ''That this Act [amending sections 662, 681, 682, and 684 of this title, and section 26–610 of the District of Columbia Code, 1973 edition] may be cited as the 'Small Business Investment Act Amendments of 1960'.''

SHORT TITLE

Section 101 of Pub. L. 85–699, as amended by Pub. L. 106–9, § 2(d)(3), Apr. 5, 1999, 113 Stat. 18, provided that: ''This Act [enacting this chapter, amending sections 77c, 77ddd, 80a–18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealing section 352a of Title 12, Banks and Banking, and enacting notes set out under this section and former section 352a of title 12] may be cited as the 'Small Business Investment Act of 1958'.''

REGULATIONS

Section 415 of title IV of Pub. L. 102–366 provided that: ''Notwithstanding any law, rule, regulation or administrative moratorium, except as otherwise expressly provided in this Act [probably means ''this title'', see Short Title of 1992 Amendment note above], the Small Business Administration shall—

''(1) within 90 days after the date of enactment of this Act [Sept. 4, 1992], publish in the Federal Register proposed rules and regulations implementing this Act and the amendments made by this Act; and

''(2) within 180 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act, and enter such contracts as are necessary to implement this Act and the amendments made by this Act.''

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Section 418 of title IV of Pub. L. 102–366 provided that: ''Nothing in this Act [probably means ''this title'', see Short Title of 1992 Amendment note above] (and no amendment made by this Act) shall be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws.''

§ 662. Definitions

As used in this chapter—

(1) the term ''Administration'' means the Small Business Administration;

(2) the term ''Administrator'' means the Administrator of the Small Business Administration;

(3) the terms ''small business investment company'', ''company'', and ''licensee'' mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;

(4) the term ''State'' includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia;

(5) the term ''small-business concern'' shall have the same meaning as in the Small Business Act [15 U.S.C. 631 et seq.], except that, for purposes of this chapter—

(A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

(i) shall not cause a business concern to be deemed not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)]; and

(iii) shall be disregarded in determining whether a small business concern is a smaller enterprise; and

(B) in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)], if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation;

(6) the term ''development companies'' means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;

(7) the term ''license'' means a license issued by the Administration as provided in section 681 of this title;

(8) the term ''articles'' means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities;

(9) the term ''private capital''—

(A) means the sum of—

(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: *Provided*, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

(B) does not include any—

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

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

(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

(I) funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established prior to October 1, 1987;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);

(10) the term ''leverage'' includes—

(A) debentures purchased or guaranteed by the Administration;

(B) participating securities purchased or guaranteed by the Administration; and

(C) preferred securities outstanding as of October 1, 1995;

(11) the term ''third party debt'' means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

(12) the term ''smaller enterprise'' means any small business concern that, together with its affiliates—

(A) has—

(i) a net financial worth of not more than $6,000,000, as of the date on which assistance is provided under this chapter to that business concern; and

(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this chapter to that business concern, of not more than $2,000,000, after Federal income taxes (excluding any carryover losses) except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation; or

(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

(13) the term ''qualified nonprivate funds'' means any—

(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term ''private capital'';

(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term ''private capital''; and

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

(14) the terms ''employee welfare benefit plan'' and ''pension plan'' have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002], and are intended to include—

(A) public and private pension or retirement plans subject to such Act [29 U.S.C. 1001 et seq.]; and

(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

(15) the term ''member'' means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company;

(16) the term ''limited liability company'' means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration;

(17) the term ''long term'', when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year;

(18) the term ''Energy Saving debenture'' means a deferred interest debenture that—

(A) is issued at a discount;

(B) has a 5-year maturity or a 10-year maturity;

(C) requires no interest payment or annual charge for the first 5 years;

(D) is restricted to Energy Saving qualified investments; and

(E) is issued at no cost (as defined in section 661a[1] of title 2) with respect to purchasing and guaranteeing the debenture; and

(19) the term ''Energy Saving qualified investment'' means investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources.

(Pub. L. 85–699, title I, § 103, Aug. 21, 1958, 72 Stat. 690; Pub. L. 86–502, § 3, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, § 2, Oct. 3, 1961, 75 Stat. 752; Pub. L. 92–595, § 2(a), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, § 106(a), June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, § 410, Sept. 4, 1992, 106 Stat. 1017; Pub. L. 104–208, div. D, title II, § 208(a), Sept. 30, 1996, 110 Stat. 3009–739; Pub. L. 105–135, title II, § 213, Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–9, § 2(c), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–554, § 1(a)(9) [title IV, § 402], Dec. 21, 2000, 114 Stat. 2763, 2763A–690; Pub. L. 110–140, title XII, § 1205(b), Dec. 19, 2007, 121 Stat. 1773.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in par. (5), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified to chapter 14A (§ 631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables. The term ''small-business concern'' is defined in section 632 of this title.

The Employee Retirement Income Security Act of 1974, referred to in par. (14), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 661a of title 2, referred to in par. (18)(E), was in the original ''section 502 of the Credit Reform Act of

[1] See References in Text note below.

1990'', which was translated as reading ''section 502 of the Federal Credit Reform Act of 1990'', to reflect the probable intent of Congress.

AMENDMENTS

2007—Pars. (18), (19). Pub. L. 110–140 added pars. (18) and (19).

2000—Par. (5)(A)(i). Pub. L. 106–554, § 1(a)(9) [title IV, § 402(a)], inserted before semicolon at end ''regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment''.

Par. (17). Pub. L. 106–554, § 1(a)(9) [title IV, § 402(b)], added par. (17).

1999—Par. (5). Pub. L. 106–9, § 2(c)(1), designated existing provisions after ''for purposes of this chapter'' as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Par. (12)(A)(ii). Pub. L. 106–9, § 2(c)(2), inserted before ''; or'': ''except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

''(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

''(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation''.

1997—Par. (9)(B)(iii). Pub. L. 105–135 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1996—Par. (5). Pub. L. 104–208, § 208(a)(1), inserted before semicolon at end '', except that, for purposes of this chapter, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

''(A) shall not cause a business concern to be deemed not independently owned and operated;

''(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

''(C) shall be disregarded in determining whether a small business concern is a smaller enterprise''.

Par. (9). Pub. L. 104–208, § 208(a)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''notwithstanding any other provision of law, the term 'private capital' means the private paid-in capital and paid-in surplus of a corporate licensee, or the private partnership capital of an unincorporate licensee, inclusive of (A) any funds invested in the licensee by a public or private pension fund, (B) any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital and otherwise meets criteria established by the Administration, and (C) unfunded commitments from institutional investors that meet criteria established by the Administration, but it excludes any funds which are borrowed by the licensee from any source or which are obtained or derived, directly or indirectly, from any Federal source, including the Administration: *Provided*, That no unfunded commitment from an institutional investor may be used for the purpose of meeting the minimum amount of private capital required by this chapter or as the basis for the Administration to issue obligations to provide financing; and''.

Pars. (10) to (16). Pub. L. 104–208, § 208(a)(3), added pars. (10) to (16) and struck out former par. (10) which read as follows: ''the term 'leverage' includes debentures purchased or guaranteed by the Administration, participating securities purchased or guaranteed by the Administration, or preferred securities issued by companies licensed under section 681(d) of this title and which have been purchased by the Administration.''

1992—Pars. (9), (10). Pub. L. 102–366 added pars. (9) and (10).

1976—Par. (8). Pub. L. 94–305 added par. (8).

1972—Par. (3). Pub. L. 92–595 substituted ''section 681'' for ''section 681(c)''.

Par. (7). Pub. L. 92–595 substituted ''section 681'' for ''section 681(c)''.

1961—Par. (3). Pub. L. 87–341, § 2(1), inserted ''licensee'' and substituted ''company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681(c) of this title'' for ''small business investment company organized as provided in subchapter III of this chapter, including (except for purposes of sections 681 and 687(f) of this title) a State-chartered investment company which has obtained the approval of the Administrator to operate under the provisions of this chapter as provided in section 688 of this title and a company converted into a small business investment company under section 691 of this title''.

Par. (7). Pub. L. 87–341, § 2(2), added par. (7).

1960—Par. (4). Pub. L. 86–502 substituted definition of ''State'' for definition of ''United States''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

SUBCHAPTER II—SMALL BUSINESS INVESTMENT DIVISION OF SMALL BUSINESS ADMINISTRATION

§ 671. Establishment; Associate Administrator; appointment and compensation

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85–699, title II, § 201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89–117, title III, § 316(b), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89–779, § 2, Nov. 6, 1966, 80 Stat. 1359.)

AMENDMENTS

1966—Pub. L. 89–779 substituted ''Associated Administrator'' for ''Deputy Administrator'' as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small

Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89–117 provided that the powers conferred by subchapters IV–A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

§ 672. Repealed. Pub. L. 87–341, § 11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85–699, title II, § 202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

§ 681. Organization

(a) Incorporation and charter under State law, period of succession; area of operations

A small business investment company shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this subchapter, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

(b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

(c) Issuance of license

(1) Submission of application

Each applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) Procedures

(A) Status

Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(B) Approval or disapproval

Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

(i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or

(ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) Matters considered

In reviewing and processing any application under this subsection, the Administrator—

(A) shall determine whether—

(i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this title; and

(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(B) shall take into consideration—

(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

(ii) the general business reputation of the owners and management of the applicant; and

(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(C) shall not take into consideration any projected shortage or unavailability of leverage.

(4) Exception

(A) In general

Notwithstanding any other provision of this chapter, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

(i) has private capital of not less than $3,000,000;

(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 682(a) of this title; and

(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 682(a) of this title.

(B) Leverage

An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title, unless the applicant—

(i) files an application for a license not later than 180 days after December 2, 1997;

(ii) is located in a State that is not served by a licensee; and

(iii) agrees to be limited to 1 tier of leverage available under section 682(b) of this title, until the applicant meets the requirements of section 682(a) of this title.

(e)[1] Fees

(1) In general

The Administration may prescribe fees to be paid by each applicant for a license to operate as a small business investment company under this chapter.

(2) Use of amounts

Fees collected under this subsection—

(A) shall be deposited in the account for salaries and expenses of the Administration; and

(B) are authorized to be appropriated solely to cover the costs of licensing examinations.

(Pub. L. 85–699, title III, §301, Aug. 21, 1958, 72 Stat. 691; Pub. L. 86–502, §4, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §11(a), (b), Oct. 3, 1961, 75 Stat. 756; Pub. L. 90–104, title II, §202, Oct. 11, 1967, 81 Stat. 269; Pub. L. 92–595, §2(b), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §106(b)–(d), June 4, 1976, 90 Stat. 666; Pub. L. 95–507, title I, §104, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 100–590, title I, §105, Nov. 3, 1988, 102 Stat. 2993; Pub. L. 104–208, div. D, title II, §208(b)(1)–(3)(A), Sept. 30, 1996, 110 Stat. 3009–741, 3009–742; Pub. L. 105–135, title II, §§212, 214, Dec. 2, 1997, 111 Stat. 2601.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (b), (c), and (e), see References in Text note set out under section 661 of this title.

AMENDMENTS

1997—Subsec. (c)(4)(B). Pub. L. 105–135, §212, amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title.''

Subsec. (e). Pub. L. 105–135, §214, added subsec. (e).

1996—Subsec. (a). Pub. L. 104–208, §208(b)(1), substituted ''body, a limited liability company, or'' for ''body or'' in first sentence.

Subsec. (c). Pub. L. 104–208, §208(b)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this chapter, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this chapter and issue the company a license for such operation.''

Subsec. (d). Pub. L. 104–208, §208(b)(3)(A), struck out subsec. (d) which read as follows: ''Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership, and may be licensed by the Administration to operate under the provisions of this chapter.''

1988—Subsec. (a). Pub. L. 100–590 substituted '', if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years,'' for ''has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners''.

1978—Subsec. (d). Pub. L. 95–507 authorized small business investment companies to form as limited partnerships.

1976—Subsec. (a). Pub. L. 94–305, §106(b), inserted reference to limited partnership and reference to partners, struck out ''of incorporation'' after ''by the articles'', and inserted ''or otherwise existing'' after ''chartered''.

Subsec. (b). Pub. L. 94–305, §106(c), struck out ''of incorporation'' after ''The articles''.

Subsec. (c). Pub. L. 94–305, §106(d), struck out ''of incorporation'' after ''articles'' wherever appearing.

1972—Subsec. (d). Pub. L. 92–595 added subsec. (d).

1967—Subsec. (c). Pub. L. 90–104 provided for consideration of availability of financing, the geographic area, the business reputation, ownership factor, and probability of successful operations of company including adequate profitability and financial soundness and eliminated from consideration the number of such companies previously organized in the United States and the volume of their operations.

1961—Subsec. (a). Pub. L. 87–341, §11(a), provided that small business investment companies shall be incorporated, organized and chartered under State law, with a minimum succession period of thirty years unless sooner dissolved by its activities and functions, its area of operation shall be subject to the Administration's approval, and deleted provisions setting the minimum number of incorporators at 10, no company shall be chartered by the Administration unless it determined that none could be chartered under the laws of the State and operate in accordance with this chapter, and that no such company shall be chartered by the Administration under this section after June 30, 1961.

Subsec. (c). Pub. L. 87–341, §11(b)(1), (2), substituted ''such a company's articles of incorporation and permit it to operate under the provisions of this chapter'' for ''the establishment of such a company and its proposed articles of incorporation'', and provided that if the Administration approves the company to operate under the provisions of this chapter, it may issue the company a license for such operation.

Subsec. (d). Pub. L. 87–341, §11(b)(3), repealed subsec. (d) which specified the general powers of a company formed under this section.

Subsec. (e). Pub. L. 87–341, §11(b)(3), repealed subsec. (e) which provided for a board of directors for a company formed under this section.

[1] So in original. No subsec. (d) has been enacted.

1960—Subsec. (d)(9) to (11). Pub. L. 86–502 repealed par. (9) which empowered companies to act as depositories or fiscal agents of the United States, and redesignated pars. (10) and (11) as (9) and (10), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 211 of title II of Pub. L. 90–104 provided that: ''The effective date of this title [amending this section and sections 682 to 684, 686, 687, 687b, and 692 of this title] shall be ninety days after enactment [Oct. 11, 1967], except that, with respect to section 207 [amending section 686 of this title], it shall be January 1, 1968.''

SAVINGS PROVISION

Section 208(b)(3)(B) of div. D of Pub. L. 104–208 provided that: ''The repeal under subparagraph (A) [repealing subsec. (d) of this section] shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 [subsec. (d) of this section] before the date of enactment of this Act [Sept. 30, 1996].''

REGULATORY REVIEW

Pub. L. 102–366, title IV, § 408(d), Sept. 4, 1992, 106 Stat. 1017, directed Small Business Administration, not later than 90 days after Sept. 4, 1992, to complete a review of regulations intended to provide for safety and soundness of small business investment companies which obtain financing from the Administration under provisions of the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., and to exempt from such regulations, or to separately regulate, companies which do not obtain financing from the Administration.

REPORTS TO CONGRESS

Pub. L. 102–366, title IV, § 408(e), Sept. 4, 1992, 106 Stat. 1017, directed Administration, within 180 days after Sept. 4, 1992, to report on actions taken pursuant to section 408(d) of Pub. L. 102–366, formerly set out above, to the Committees on Small Business of the Senate and the House of Representatives, including the rationale for its actions.

Pub. L. 102–366, title IV, § 417(b), Sept. 4, 1992, 106 Stat. 1019, provided that not later than 4 years after Sept. 4, 1992, the Comptroller General was to transmit to Congress a report that reviewed the Small Business Investment Company program established under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for the 3-year period following Sept. 4, 1992, with respect to each item listed in section 687(g)(3) of this title.

§ 682. Capital requirements

(a) Amount

(1) In general

Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) $5,000,000; or

(B) $10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this chapter.

(2) Exception

The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) Adequacy

In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able[1] both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

(4) Exemption from capital requirements

The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 681 of this title before September 30, 1996, that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after September 30, 1996, will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) Financial institution investments

(1) Certain banks

Notwithstanding the provisions of section 1845(a)(1)[2] of title 12, any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(2) Certain savings associations

Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

(c) Diversification of ownership

The Administrator shall ensure that the management of each licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

(Pub. L. 85–699, title III, §302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86–502, §5, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88–273, §2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §§203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94–305, title I, §§106(e), 107, June 4, 1976, 90 Stat. 666; Pub. L. 95–89, title II, §210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–507, title I, §105, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 102–366, title IV, §§406(a), 409, Sept. 4, 1992, 106 Stat. 1015, 1017; Pub. L. 104–208, div. D, title II, §208(c), Sept. 30, 1996, 110 Stat. 3009–742; Pub. L. 105–135, title II, §215(a), Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–554, §1(a)(9) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–690.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a)(1)(B), see References in Text note set out under section 661 of this title.

Subsection (d) of section 681 of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 1845(a)(1) of title 12, referred to in subsec. (b)(1), was repealed by Pub. L. 89–485, §9, July 1, 1966, 80 Stat. 240. See section 371c of Title 12, Banks and Banking.

CODIFICATION

September 30, 1996, referred to in subsecs. (a)(4) and (c), was in the original ''the date of enactment of the Small Business Program Improvement Act of 1996'', which was translated as meaning the date of enactment of the Small Business Programs Improvement Act of 1996, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Subsec. (b). Pub. L. 105–135 substituted ''any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.'' for ''shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus.''

1996—Subsec. (a). Pub. L. 104–208, §208(c)(1), inserted heading and substituted pars. (1) to (3)(A) and ''determine that the licensee will be able'' in par. (3)(B) for ''The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than $150,000: *Provided, however*, That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to section 681(c) of this title shall be not less than $2,500,000 and pursuant to section 681(d) of this title shall be not less than $1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company,''.

Subsec. (a)(4). Pub. L. 104–208, §208(c)(2), added par. (4).

Subsec. (c). Pub. L. 104–208, §208(c)(3), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration.''

1992—Subsec. (a). Pub. L. 102–366 substituted ''1992 pursuant to section 681(c) of this title shall be not less than $2,500,000 and pursuant to section 681(d) of this title shall be not less than $1,500,000'' for ''1979 pursuant to section 681(c) and (d) of this title shall be not less than $500,000'' and inserted at end ''The Administration shall also determine the ability of the company, both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.''

1978—Subsec. (a). Pub. L. 95–507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than $500,000.

1977—Subsec. (b). Pub. L. 95–89 inserted ''and'' between ''capital'' and ''surplus''.

1976—Subsec. (a). Pub. L. 94–305, §106(e), struck out ''of incorporation'' after ''its articles''.

Subsec. (b). Pub. L. 94–305, §107, struck out provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90–104, §203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of $150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accordance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least $300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of $700,000 or the amount of paid-in capital and surplus of the company from other sources and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90–104, §204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an

amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88–273 increased the limitation on Administration purchase of debentures from $400,000 to $700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87–341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88–273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87–341, § 3(a), inserted ''and growth'', limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchasable debentures to not more than the lesser of $400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company's license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to $150,000.

Subsec. (b). Pub. L. 87–341, § 3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86–502 substituted ''Notwithstanding the provisions of section 1845(a)(1) of title 12, shares'' for ''Shares''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§ 683. Borrowing operations

(a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

(b) Debentures and participating securities

To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 percent, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 681(c) of this title shall not exceed 300 per centum of the private capital of such company: *Provided*, That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to prepay such excess: *And provided further*, That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 681(c) of this title shall be determined by the amount of such company's private capital—

(i) if the company has private capital of not more than $15,000,000, the total amount of leverage shall not exceed 300 percent of private capital;

(ii) if the company has private capital of more than $15,000,000 but not more than $30,000,000, the total amount of leverage shall not exceed $45,000,000 plus 200 percent of the amount of private capital over $15,000,000; and

(iii) if the company has private capital of more than $30,000,000, the total amount of leverage shall not exceed $75,000,000 plus 100 percent of the amount of private capital over $30,000,000 but not to exceed an additional $15,000,000.

(B) Adjustments.—

(i) IN GENERAL.—The dollar amounts in clauses (i), (ii), and (iii) of subparagraph (A) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

(ii) INITIAL ADJUSTMENTS.—The initial adjustments made under this subparagraph after December 2, 1997,[1] shall reflect only increases from March 31, 1993.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 689 of this title), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after December 19, 2007, or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) MAXIMUM INVESTMENT.—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 661a of title 2) with respect to purchasing or guaranteeing any debenture involved.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 681(c) of this title may issue and have outstanding both guaranteed debentures and participating securities: *Provided*, That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

(4) MAXIMUM AGGREGATE AMOUNT OF LEVERAGE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of outstanding leverage issued to any company or companies that are commonly controlled (as determined by the Administrator) may not exceed $90,000,000, as adjusted annually for increases in the Consumer Price Index.

(B) EXCEPTIONS.—The Administrator may, on a case-by-case basis—

(i) approve an amount of leverage that exceeds the amount described in subparagraph (A) for companies under common control; and

(ii) impose such additional terms and conditions as the Administrator determines to be appropriate to minimize the risk of loss to the Administration in the event of default.

(C) APPLICABILITY OF OTHER PROVISIONS.—Any leverage that is issued to a company or companies commonly controlled in an amount that exceeds $90,000,000, whether as a result of an increase in the Consumer Price Index or a decision of the Administrator, is subject to subsection (d) of this section.

(D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the aggregate outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 689 of this title), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(E) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the aggregate outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after December 19, 2007, or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) MAXIMUM INVESTMENT.—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 661a of title 2) with respect to purchasing or guaranteeing any debenture involved.

For purposes of this subsection, the term ''venture capital'' includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) Third party debt

The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt

[1] See Codification note below.

that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d) Required certifications

(1) In general

The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing—

(A) for licensees with leverage less than or equal to $90,000,000, that not less than 20 percent of the licensee's aggregate dollar amount of financings will be provided to smaller enterprises; and

(B) for licensees with leverage in excess of $90,000,000, that, in addition to satisfying the requirements of subparagraph (A), 100 percent of the licensee's aggregate dollar amount of financings made in whole or in part with leverage in excess of $90,000,000 will be provided to smaller enterprises (as defined in section 662(12) of this title).

(2) Multiple licensees

Multiple licensees under common control (as determined by the Administrator) shall be considered to be a single licensee for purposes of determining both the applicability of and compliance with the investment percentage requirements of this subsection.

(e) Capital impairment

Before approving any application for leverage submitted by a licensee under this chapter, the Administrator—

(1) shall determine that the private capital of the licensee meets the requirements of section 682(a) of this title; and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f) Redemption or repurchase of preferred stock

Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

(A) the market value of the stock;

(B) the value of benefits provided and anticipated to accrue to the issuer;

(C) the amount of dividends paid, accrued, and anticipated; and

(D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) Guarantee of payment of and authority to purchase participating securities

In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 681(c) of this title, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term ''participating securities'' includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term ''prioritized payments'' includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of any accrued prioritized payment: *Provided*, That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph (11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished: *Provided further*, That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the near-

est one-eighth of 1 percent, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this chapter shall commit to invest or shall invest an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, ''equity capital'' means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.

(5) The only debt (other than leverage obtained in accordance with this subchapter) which any company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refinanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus $125,000 if the company's combined capital is less than $20,000,000. For purposes of this paragraph, (A) the term ''combined capital'' means the aggregate amount of private capital and outstanding leverage and (B) the term ''management expenses'' includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term ''maximum tax liability'' means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term ''State income tax'' means the income tax of the State where the company's principal place of business is located. A company may also elect to make a distribution under this paragraph at any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remain-

der shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: *Provided*, That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or $10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than $10,000,000.

(11)(A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

(B) Notwithstanding any other provision of this paragraph—

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term ''trustee'' means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

(h) Computation of amounts due under participating securities

The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) of this section shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepays or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: *Provided*, That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6) of this section, it may not elect to exclude profits on existing investments under this paragraph.

(i) Leverage fee

With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

(j) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures and participating securities under this chapter.

(k) Energy saving debentures

In addition to any other authority under this chapter, a small business investment company licensed in the first fiscal year after December 19, 2007, or any fiscal year thereafter may issue Energy Saving debentures.

(Pub. L. 85–699, title III, §303, Aug. 21, 1958, 72 Stat. 692; Pub. L. 87–341, §4, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88–273, §3, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §205, Oct. 11, 1967, 81 Stat. 270; Pub. L. 92–213, §10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–595, §2(c), (d), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §104, June 4, 1976, 90 Stat. 665; Pub. L. 95–507, title I, §101, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 101–162, title V, (4), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–574, title II, §215(a)(1), (b), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 102–366, title IV, §§402, 403, 412, 413, Sept. 4, 1992, 106 Stat. 1008, 1009, 1018; Pub. L. 103–403, title II, §215, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–208, div. D, title II, §208(d)(1)–(4)(A), (5), (6), (h)(1)(A), Sept. 30, 1996, 110 Stat. 3009–743, 3009–744, 3009–746; Pub. L. 105–135, title II, §215(b)–(d), Dec. 2, 1997, 111 Stat. 2602, 2603; Pub. L. 106–9, §2(d)(1), Apr. 5, 1999, 113 Stat. 18; Pub. L. 106–554, §1(a)(8) [§1(d)], §1(a)(9) [title IV, §§404, 405], Dec. 21, 2000, 114 Stat. 2763, 2763A–664, 2763A–690, 2763A–691; Pub. L. 107–100, §2(a), Dec. 21, 2001, 115 Stat. 966; Pub. L. 108–84, §117, Sept. 30, 2003, 117 Stat. 1044; Pub. L. 108–172, §1(b), Dec. 6, 2003, 117 Stat. 2065; Pub. L. 108–447, div. K, title II, §201, Dec. 8, 2004, 118 Stat. 3465; Pub. L. 110–140, title XII, §§1205(a), 1206, Dec. 19, 2007, 121 Stat. 1773.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (b), (e), (g)(2), (4), (j), and (k), see References in Text note set out under section 661 of this title.

CODIFICATION

December 2, 1997, referred to in subsec. (b)(2)(B)(ii), was in the original ''the date of the enactment of the Small Business Reauthorization Act of 1937'' which was translated as meaning the date of enactment of the Small Business Reauthorization Act of 1997, Pub. L. 105–135, as the probable intent of Congress.

AMENDMENTS

2007—Subsec. (b)(2)(D). Pub. L. 110–140, §1206(a), added subpar. (D).

Subsec. (b)(4)(E). Pub. L. 110–140, §1206(b), added subpar. (E).

Subsec. (k). Pub. L. 110–140, §1205(a), added subsec. (k).

2004—Subsec. (g)(4). Pub. L. 108–447 substituted ''chapter'' for ''subsection'' in first sentence and ''from appropriate sources, as determined by the Administration'' for ''contingent upon and limited to the extent of earnings'' in second sentence.

2003—Subsec. (g)(2). Pub. L. 108–84 and Pub. L. 108–172 amended par. (2) identically, substituting ''1.46 percent'' for ''1.38 percent''.

2001—Subsec. (b). Pub. L. 107–100, §2(a)(1), in introductory provisions, substituted ''September 30, 2001'' for ''September 30, 2000'', struck out ''of not more than 1 percent per year'' after ''annually by the Administration,'', and inserted ''which amount may not exceed 1.38 percent per year, and'' before ''which shall be paid''.

Subsec. (g)(2). Pub. L. 107–100, §2(a)(2), substituted ''September 30, 2001'' for ''September 30, 2000'', struck out ''of not more than 1 percent per year'' after ''annually by the Administration,'', and inserted ''which amount may not exceed 1.38 percent per year, and'' before ''which shall be paid''.

2000—Subsec. (b). Pub. L. 106–554, §1(a)(9) [title IV, §404(a)], in introductory provisions, substituted ''plus, for debentures obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which shall be paid to and retained by the Administration'' for ''plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration''.

Subsec. (b)(2). Pub. L. 106–554, §1(a)(8) [§1(d)(1)], amended par. (2) generally, revising structure of par. from one consisting of introductory provisions and subpars. (A) to (D) to one consisting of subpars. (A) and (B), and adding subpar. (C).

Subsec. (b)(4)(D). Pub. L. 106–554, §1(a)(8) [§1(d)(2)], added subpar. (D).

Subsec. (g)(2). Pub. L. 106–554, §1(a)(9) [title IV, §404(b)], substituted ''plus, for participating securities obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which shall be paid to and retained by the Administration'' for ''plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration''.

Subsec. (g)(8). Pub. L. 106–554, §1(a)(9) [title IV, §405], substituted ''subchapter S corporation'' for ''subchapter s corporation'', ''any time during any calendar quarter based on an'' for ''the end of any calendar quarter based on a quarterly'', and ''interim distributions for a calendar year,'' for ''quarterly distributions for a calendar year,''.

1999—Subsec. (g)(13). Pub. L. 106–9 struck out heading and text of par. (13). Text read as follows:

''(A) IN GENERAL.—Subject to the provisions of subparagraph (B), of the amount of the annual program level of participating securities approved in appropriations Acts, 50 percent shall be reserved for funding small business investment companies with private capital of not more than $20,000,000.

''(B) EXCEPTION.—During the last quarter of each fiscal year, if the Administrator determines that there is a lack of qualified applicants with private capital of not more than $20,000,000, the Administrator may utilize all or any part of the program level for securities reserved under subparagraph (A) for qualified applicants with private capital of more than $20,000,000.''

1997—Subsec. (b)(2)(D). Pub. L. 105–135, §215(b)(1)(A), added subpar. (D).

Subsec. (b)(4). Pub. L. 105–135, §215(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: ''In no event shall the aggregate amount of outstanding leverage of any such company or companies which are commonly controlled as determined by the Administration exceed $90,000,000, unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default.''

Subsec. (d). Pub. L. 105–135, §215(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises.''

Subsec. (g)(8). Pub. L. 105–135, §215(c), inserted at end ''A company may also elect to make a distribution under this paragraph at the end of any calendar quarter based on a quarterly estimate of the maximum tax li-

ability. If a company makes 1 or more quarterly distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.''

Subsec. (i). Pub. L. 105–135, § 215(d), substituted ''in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee'' for '', payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee'' before period at end.

1996—Subsec. (a). Pub. L. 104–208, § 208(h)(1)(A)(i), substituted ''securities,'' for ''debenture bonds,''.

Subsec. (b). Pub. L. 104–208, § 208(d)(1), (6)(A), in first sentence struck out ''(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)'' after ''is authorized'' and in fifth sentence substituted ''1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration'' for ''1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes''.

Subsec. (c). Pub. L. 104–208, § 208(d)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text consisted of 7 pars. which authorized the Administration to purchase securities and to purchase or guarantee payments on debentures issued by small business investment companies operating under section 681(d) of this title.

Subsec. (d). Pub. L. 104–208, § 208(d)(3), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''If the Administration guarantees debentures issued by a small business investment company operating under authority of section 681(d) of this title, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 687*l* of this title. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations Acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due.''

Subsec. (e). Pub. L. 104–208, § 208(d)(4)(A), inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: ''In determining the private capital of a small business investment company licensed under section 681(d) of this title and notwithstanding section 662(9) of this title, Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from or licensing by the Administration, providing such funds were invested to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title.''

Subsec. (f). Pub. L. 104–208, § 208(h)(1)(A)(ii), added subsec. (f) and struck out former subsec. (f) which read as follows: ''Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as provided in paragraph (5) of subsection (c) of this section and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 681(d) of this title, to the extent and in the amounts provided in advance in appropriations Acts.''

Subsec. (g)(2). Pub. L. 104–208, § 208(d)(6)(B), substituted ''1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration'' for ''1 per centum, plus, at the time the guarantee is issued, such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes, but not to exceed 2 per centum''.

Subsec. (g)(4). Pub. L. 104–208, § 208(d)(5), struck out ''and maintain'' after ''shall invest''.

Subsec. (g)(8). Pub. L. 104–208, § 208(h)(1)(A)(iii), substituted ''partners, shareholders, or members'' for ''partners or shareholders'', ''partner's, shareholder's, or member's'' for ''partner's or shareholder's'', and ''partner, shareholder, or member'' for ''partner or shareholder''.

Subsecs. (i), (j). Pub. L. 104–208, § 208(d)(6)(C), added subsecs. (i) and (j).

1994—Subsec. (g)(13). Pub. L. 103–403 added par. (13).

1992—Subsec. (b). Pub. L. 102–366, § 402(1), inserted ''or participating securities'' after ''debentures'' in first and sixth sentences.

Subsec. (b)(1) to (4). Pub. L. 102–366, § 402(2), added pars. (1) to (4) and struck out former pars. (1) to (3) which read as follows:

''(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures guaranteed and outstanding under this subchapter of any such company or companies which are commonly controlled as determined by the Administration exceed $35,000,000.

''(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

''(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection.''

Subsec. (c). Pub. L. 102–366, § 412(1), (2), struck out ''preferred'' before ''securities'' in first sentence and inserted at end ''As used in this subsection, the term 'securities' means shares of nonvoting stock or other corporate securities or limited partnership interests which have similar characteristics.''

Subsec. (c)(1). Pub. L. 102–366, § 412(3), in introductory provisions substituted ''such securities'' for ''shares of nonvoting stock (or other corporate securities having similar characteristics)''.

Subsec. (c)(6). Pub. L. 102–366, § 402(3), inserted before period at end '', except as provided in paragraph (7)''.

Subsec. (c)(7). Pub. L. 102–366, § 402(4), added par. (7).

Subsec. (e). Pub. L. 102–366, § 413, inserted ''licensed under section 681(d) of this title and notwithstanding section 662(9) of this title'' after ''company'' and substituted ''to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title.'' for ''prior to November 21, 1989.''

Subsecs. (g), (h). Pub. L. 102–366, § 403, added subsecs. (g) and (h).

1990—Subsec. (b)(1). Pub. L. 101–574, § 215(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000.''

Subsec. (c)(6). Pub. L. 101–574, § 215(b)(1), inserted ''under the provisions of this subchapter,'' after ''debentures or securities''.

Subsec. (d). Pub. L. 101–574, § 215(b)(2), struck out after second sentence ''The aggregate amount of debentures with interest rate reductions as provided in this subsection or as provided in section 687i of this title which may be outstanding at any time from any such company shall not exceed 200 per centum of the private paid-in capital and paid-in surplus of such company.''

1989—Subsec. (c). Pub. L. 101–162 added subsec. (c) and struck out former subsec. (c) which contained provisions substantially similar to introductory provisions and pars. (1) to (4).

Subsecs. (d) to (f). Pub. L. 101–162 added subsecs. (d) to (f).

1978—Subsec. (c)(1). Pub. L. 95–507 increased the amount of preferred stock small business investment companies were authorized to sell to the Administration so long as such preferred stock leverage did not exceed 200 per centum of the qualified paid-in capital and so long as the amount of such stock purchased by the Administration was not greater in amount than the investment companies' outstanding equity investments and inserted definition of ''equity securities''.

1976—Subsec. (b)(1). Pub. L. 94–305, § 104(a), substituted ''300'' for ''200'' and ''$35,000,000'' for ''$15,000,000''.

Subsec. (b)(2). Pub. L. 94–305, § 104(b), substituted ''400'' for ''300'' and ''$35,000,000'' for ''$20,000,000''.

Subsec. (c)(2)(iii). Pub. L. 94–305, § 104(c), substituted ''400'' for ''300'' and ''300'' for ''200''.

Subsec. (c)(4). Pub. L. 94–305, § 104(c)(2), substituted ''300'' for ''200''.

1972—Subsec. (b)(1). Pub. L. 92–595, § 2(c)(1), (2), substituted ''combined private paid-in capital'' for ''combined paid-in capital'' and ''$15,000,000'' for ''$7,500,000''.

Subsec. (b)(2). Pub. L. 92–595, § 2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is $500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is $1,000,000 or more, and increased the maximum amount of outstanding debentures from $10,000,000 to $20,000,000.

Subsec. (c). Pub. L. 92–595, § 2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92–213 inserted provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

1967—Subsec. (b). Pub. L. 90–104 substituted purchase of debenture provisions of former section 682(a) of this title for former provision for loans (eliminating participation on deferred (standby) basis), incorporated subordination provision of such former section 682(a) (inserting provision for Administration exercise of reasonable investment prudence and for consideration of financial soundness of the company), provided for maximum term of fifteen years, substituted rate of interest taking into consideration current average market yield on outstanding marketable Treasury obligations with remaining periods to maturity comparable to average maturities on such debentures, as adjusted plus charge toward cost of programs, for rate of interest not lower than average investment yield on marketable Treasury obligations outstanding at time of loan involved, and added pars. (1) to (3) and definition of venture capital, former par. (1) limiting Administration purchases of company obligations to 50 per centum of paid-in capital and surplus or $4,000,000, whichever is less, and par. (2) requiring loans to be of such sound value as reasonably to assure repayment.

1964—Subsec. (b). Pub. L. 88–273 provided for participation loans by Administration with lending institutions on an immediate or deferred basis and for a minimum interest rate measured by the average investment yield on marketable obligations of the United States outstanding at the time of the loan involved, and designated existing provisions as clauses (1) and (2).

1961—Subsec. (b). Pub. L. 87–341 limited the Administration's authorization to lend funds to the extent that the funds are not available to the company involved from private sources on reasonable terms, and the total amount of obligations, including commitments to purchase such obligations, which can be purchased in any one company to not more than 50 percent of the paid-in capital and surplus or $4,000,000, whichever is less, and inserted ''All loans made by the Administration under this subsection shall be of such sound value as reasonably to assure repayment.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–100, § 2(b), Dec. 21, 2001, 115 Stat. 966, provided that: ''The amendments made by this section [amending this section] shall become effective on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 215(a)(2) of Pub. L. 101–574, as amended by Pub. L. 102–140, title VI, § 609(c), Oct. 28, 1991, 105 Stat. 825, provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1992.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

REGULATIONS

Section 208(d)(4)(B) of div. D of Pub. L. 104–208 provided that:

''(i) UNIFORM APPLICABILITY.—Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 [15 U.S.C. 683(e)] that applies to any licensee with outstanding leverage obtained before the effective date of that regulation, shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

''(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'Administration', 'leverage' and 'licensee' have the same meanings as in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662].''

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§ 684. Equity capital for small-business concerns

(a) Function of investment companies

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Conditions

Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) Repealed. Pub. L. 90–104, title II, § 206, Oct. 11, 1967, 81 Stat. 271

(d) Direct or cooperative provision of capital

Equity capital provided to incorporated small business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

(Pub. L. 85–699, title III, § 304, Aug. 21, 1958, 72 Stat. 693; Pub. L. 86–502, § 6, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, § 5, Oct. 3, 1961, 75 Stat. 752; Pub. L. 90–104, title II, § 206, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92–595, § 2(e), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

1967—Subsec. (c). Pub. L. 90–104 repealed subsec. (c) which authorized purchase of stock of investment companies by small-business concerns in an amount equal to 5 per centum of capital provided.

1961—Subsec. (d). Pub. L. 87–341 added subsec. (d).

1960—Subsec. (a). Pub. L. 86–502 struck out ''primary'' before ''function'', and substituted ''a source of equity capital for incorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration'' for ''a source of needed equity capital for small-business concerns in the manner and subject to the conditions described in this section''.

Subsec. (b). Pub. L. 86–502 redesignated subsec. (c) as (b), and repealed former subsec. (b) which required capital to be secured only through the purchase of debenture bonds.

Subsecs. (c), (d). Pub. L. 86–502 redesignated subsec. (d) as (c), and substituted ''such concern shall have the right, exercisable in whole or in such part as such concern may elect, to become a stockholder-proprietor by investing in the capital stock of the company 5 per centum'' for ''such concern shall be required to become a stockholder-proprietor of the company by investing in the capital stock of the company, in an amount equal to not less than 2 percent nor more than 5 percent''. Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

§ 685. Long-term loans to small-business concerns

(a) Authorization

Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Direct loans; loans on participation basis

Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.

(c) Maximum rate of interest

The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration.

(d) Maturity

Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Soundness of loan; security

Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Extension or renewal

Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

(Pub. L. 85–699, title III, §305, Aug. 21, 1958, 72 Stat. 693; Pub. L. 87–341, §6, Oct. 3, 1961, 75 Stat. 753; Pub. L. 94–305, title I, §105, June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, §411, Sept. 4, 1992, 106 Stat. 1018.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (c), see References in Text note set out under section 661 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–366 inserted before period at end '': *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration''.

1976—Subsec. (b). Pub. L. 94–305 struck out provision that in agreements to participate in loans on a deferred basis, the participation by the company shall not be in excess of 90 percentum of the balance of the loan outstanding at the time of disbursement.

1961—Subsec. (b). Pub. L. 87–341 substituted ''other lenders, incorporated or unincorporated'' for ''other lending institutions''.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§686. Aggregate limitations on amount of assistance to any single enterprise

(a) Percentage limitation of private capital

If any small business investment company has obtained financing from the Administration and such financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration.

(b) Repealed. Pub. L. 92–595, §2(f), Oct. 27, 1972, 86 Stat. 1316

(c) Application of provisions to commitments incurred prior to effective date of section

With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

(Pub. L. 85–699, title III, §306, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87–341, §7(a), Oct. 3, 1961, 75 Stat. 753; Pub. L. 88–273, §4, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §207, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92–595, §2(f), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 102–366, title IV, §408(a), Sept. 4, 1992, 106 Stat. 1016.)

REFERENCES IN TEXT

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsec. (c), see Effective Date of 1967 Amendment note set out under section 681 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–366 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.''

1972—Subsec. (a). Pub. L. 92–595, §2(f)(1), substituted ''combined private paid-in capital'' for ''combined paid-in capital''.

Subsec. (b). Pub. L. 92–595, §2(f)(2), repealed subsec. (b) which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

1967—Subsec. (a). Pub. L. 90–104 substituted ''paid-in capital and paid-in surplus of such company'' for ''capital and surplus of such small business investment company authorized by this chapter''.

Subsecs. (b), (c). Pub. L. 90–104 added subsecs. (b) and (c).

1964—Pub. L. 88–273 struck out the $500,000 limitation on amount of assistance to any single enterprise.

1961—Pub. L. 87–341 inserted ''or (2) $500,000, whichever is the lesser''.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective Jan. 1, 1968, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 7(b) of Pub. L. 87–341 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to obligations and securities acquired by a small business investment company on or after the date of the enactment of this Act [Oct. 3, 1961]; except that such amendment shall not apply with respect to any obligations or securities so acquired pursuant to a commitment issued before such date.''

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§687. Operation and regulation of companies

(a) Cooperation with banks and other financial institutions

Wherever practicable the operations of a small business investment company, including the

generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this chapter may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).

(c) Rules and regulations

The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this chapter, in accordance with the purposes of this chapter.

(d) Forfeiture of rights, privileges, and franchises; jurisdiction

Should any small business investment company violate or fail to comply with any of the provisions of this chapter or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this chapter shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Liability of United States

Except as expressly provided otherwise in this chapter, nothing in this chapter or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by any company operating under the provisions of this chapter.

(f) Performance of functions, powers, and duties by Administration and Administrator

In the performance of, and with respect to the functions, powers, and duties vested by this chapter, the Administrator and the Administration shall (in addition to any authority otherwise vested by this chapter) have the functions, powers, and duties set forth in the Small Business Act [15 U.S.C. 631 et seq.], and the provisions of sections 13 and 16 of that Act [15 U.S.C. 642, 645], insofar as applicable, are extended to the functions of the Administrator and the Administration under this chapter.

(g) Annual report on Small Business Investment activities

(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], a full and detailed account of its operations under this chapter. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

(2) In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of title 26.

(3) In its annual report for the year ending on December 31, 1993, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include a full and detailed description or account relating to—

(A) the number of small business investment companies the Administration licensed, the number of licensees that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of government leverage each has received and the type of leverage instruments each has used;

(B) the amount of government leverage that each licensee received in the previous year and the types of leverage instruments each licensee used;

(C) for each type of financing instrument, the sizes, geographic locations, and other characteristics of the small business investment companies using them, including the extent to which the investment companies have used the leverage from each instrument to make small business loans, equity investments, or both; and

(D) the frequency with which each type of investment instrument has been used in the current year and a comparison of the current year with previous years.

(h) Certifications of eligibility

(1) Certification by small business concern

Prior to receiving financial assistance from a company licensed pursuant to section 681 of this title, a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) Certification by company

Prior to providing financial assistance to a small business concern under this chapter, a company licensed pursuant to section 681 of this title shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other information supports the eligibility of the applicant.

(3) Retention of certifications

Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 681 of this title for the duration of the financial assistance.

(i) Interest rates

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term ''interest'' includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

(4)(A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the

loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

(Pub. L. 85–699, title III, § 308, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87–341, §§ 8, 11(c)(d), Oct. 3, 1961, 75 Stat. 753, 756; Pub. L. 88–273, § 5, Feb. 28, 1964, 78 Stat. 147; Pub. L. 89–779, § 3, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 90–104, title II, § 210, Oct. 11, 1967, 81 Stat. 271; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93–501, title II, § 204, Oct. 29, 1974, 88 Stat. 1559; Pub. L. 95–507, title I, § 102, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 96–104, title I, § 104, Nov. 5, 1979, 93 Stat. 790; Pub. L. 96–161, title II, § 204, Dec. 28, 1979, 93 Stat. 1236; Pub. L. 96–221, title V, §§ 524, 529, Mar. 31, 1980, 94 Stat. 166, 168; Pub. L. 99–226, § 1, Dec. 28, 1985, 99 Stat. 1744; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–366, title IV, §§ 408(c), 417(a), Sept. 4, 1992, 106 Stat. 1016, 1019; Pub. L. 103–403, title II, § 214, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–208, div. D, title II, § 208(e), (h)(1)(B), Sept. 30, 1996, 110 Stat. 3009–745, 3009–747; Pub. L. 106–9, § 2(a), Apr. 5, 1999, 113 Stat. 17; Pub. L. 108–447, div. K, title II, § 202, Dec. 8, 2004, 118 Stat. 3465.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a) to (h), see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in subsec. (f), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (g)(2)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

CODIFICATION

Section 204 of Pub. L. 96–161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96–221 effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when the amendment was in effect in such State.

Section 104 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Saving Provisions note, describing the provisions of section 212 of Pub. L. 96–161, set out under section 85 of Title 12, Banks and Banking.

Section 204 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, § 1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96–104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96–104, set out under section 85 of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–447, which directed the amendment of section 308(b) of the Small Business Investment Act by substituting ''Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—'' and pars. (1) to (3) for last sentence, was executed to this section, which is section 308 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress. Prior to amendment, last sentence read as follows: ''Such companies with outstanding financings are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.''

1999—Subsec. (i)(2). Pub. L. 106–9 inserted at end: ''In this paragraph, the term 'interest' includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.''

1996—Subsec. (e). Pub. L. 104–208, § 208(e), substituted ''Except as expressly provided otherwise in this chapter, nothing'' for ''Nothing''.

Subsec. (h). Pub. L. 104–208, § 208(h)(1)(B), substituted ''section 681 of this title'' for ''subsection (c) or (d) of section 681 of this title'' in pars. (1) to (3).

1994—Subsec. (h). Pub. L. 103–403 added subsec. (h).

1992—Subsec. (b). Pub. L. 102–366, § 408(c), inserted ''with outstanding financings'' after ''Such companies'' in third sentence.

Subsec. (g)(3). Pub. L. 102–366, § 417(a), added par. (3).

1986—Subsec. (g)(2)(J). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1985—Subsec. (i)(2). Pub. L. 99–226, § 1(a), substituted ''the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation).'' for ''the lowest of the rates described in subparagraphs (A), (B), and (C)'' and struck out subpars. (A), (B), and (C) which described the rates.

Subsec. (i)(3). Pub. L. 99–226, § 1(b), substituted ''paragraph (2)'' for ''paragraph (2)(B)''.

1980—Subsec. (h). Pub. L. 96–221, § 529, repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting in the striking out of subsec. (h) which related to the limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments. See subsec. (i) of this section for successor provisions. See also Codification and 1979 Amendment notes under this section.

Subsec. (i). Pub. L. 96–221, § 524, added subsec. (i).

1979—Subsec. (h). Pub. L. 96–161 reenacted subsec. (h) [as added by Pub. L. 96–104] with three substitutions of dates: in par. (3)(A) ''in the case of a State statute, July 1, 1980'' was substituted for ''July 1, 1981'', in par. (3)(B) ''December 28, 1979'' was substituted for ''November 5, 1979'', and in par. (3)(C) ''December 28, 1979'' was substituted for ''November 5, 1979''.

Pub. L. 96–104 added subsec. (h). A prior subsec. (h), also relating to limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments, was repealed by section 1 of Pub. L. 96–104.

1978—Subsec. (b). Pub. L. 95–507 inserted provisions authorizing small business investment companies to invest funds not reasonably needed for their operations in certificates of deposit maturing within one year or less issued by particular insured institutions and savings accounts of institutions insured by the Federal Deposit Insurance Corporation.

1974—Subsec. (h). Pub. L. 93–501 added subsec. (h).

1967—Subsec. (g). Pub. L. 90–104 designated existing provisions as par. (1) and added par. (2).

1966—Subsec. (c). Pub. L. 89–779, §3(1), struck out provisions subjecting each small business investment company to examinations by examiners approved by the Administration and requiring the submission of reports by the companies. See section 687b(b) of this title.

Subsecs. (f), (g). Pub. L. 89–799, §3(2), added subsecs. (f) and (g).

1964—Subsec. (b). Pub. L. 88–273 authorized investment of funds in insured savings accounts (up to the amount of insurance) in institutions insured by the Federal Savings and Loan Insurance Corporation.

1961—Subsec. (a). Pub. L. 87–341, §8, substituted ''investors or lenders'' for ''financial institutions'' wherever appearing, and provided that these investors or lenders can be either incorporated or unincorporated.

Subsec. (b). Pub. L. 87–341, §11(c), substituted ''operating under the provisions of this chapter'' for ''organized under this chapter''.

Subsec. (e). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e), substituted ''operating under the provisions of this chapter'' for ''organized under this chapter'', and repealed former subsec. (e) which related to obtaining restraining orders against violators of this chapter.

Subsec. (f). Pub. L. 87–341, §11(d), repealed subsec. (f) which permitted small business investment companies to extend their corporate existence for a term of not more than 30 years. See subsec. (a) of section 681 of this title.

Subsec. (g). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 2 of Pub. L. 99–226 provided that: ''This Act [amending this section] shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 529 of Pub. L. 96–221 provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 207 of Pub. L. 96–161, which provided that amendment by Pub. L. 96–161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96–161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96–161, was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Section 107 of Pub. L. 96–104, which provided that amendment by Pub. L. 96–104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 206 of Pub. L. 93–501, which provided that amendment by Pub. L. 93–501 was applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–104, §1, Nov. 5, 1979, 93 Stat. 789.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

SAVINGS PROVISION

Section 529 of Pub. L. 96–221 provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions of subsec. (h) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

TRANSFER OF FUNCTIONS

Bureau of the Budget designated as Office of Management and Budget and Offices of Director, Deputy Director, and Assistant Directors of Bureau of the Budget designated Director, Deputy Director, and Assistant Directors of Office of Management and Budget, respectively. Records, property, personnel, and funds of Bureau of the Budget transferred to Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221, section 1735f–7a of Title 12, Banks and Banking, or any other provisions of law, including section 85 of Title 12, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of Title 12.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96–161 provided that the provisions of title II of Pub. L. 96–161, which amended this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

DEFINITION OF ''STATE''

For purposes of subsec. (i) of this section, the term ''State'' to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the North-

ern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96–221, set out as a note under section 1735f–7a of Title 12, Banks and Banking.

§ 687a. Revocation and suspension of licenses; cease and desist orders

(a) Grounds for suspension or revocation

A license may be revoked or suspended by the Administration—

(1) for false statements knowingly made in any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administration;

(2) if any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

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

(4) for willful or repeated violation of, or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this chapter; or

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

(b) Grounds for cease and desist order

Where a licensee or any other person has not complied with any provision of this chapter, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such chapter or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with this chapter and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Order to show cause; contents; hearing; issuance and service

Before revoking or suspending a license pursuant to subsection (a) of this section, or issuing a cease and desist order pursuant to subsection (b) of this section, the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) Subpena of person, and books, papers and documents; fees and mileage; enforcement

The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such ob-

jection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) of this section for applications to set aside or modify orders.

(Pub. L. 85–699, title III, § 309, as added Pub. L. 87–341, § 9, Oct. 3, 1961, 75 Stat. 753; amended Pub. L. 89–779, § 4, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 98–620, title IV, § 402(15)(A), (B), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a)(3), (4) and (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–620, § 402(15)(A), struck out provision that the proceedings in such cases in the court of appeals had to be made a preferred cause and had to be expedited in every way.

Subsec. (f). Pub. L. 98–620, § 402(15)(B), struck out provision that the proceedings in such cases had to be made a preferred cause and expedited in every way.

1966—Subsec. (a). Pub. L. 89–779, § 4(b), inserted reference to revocation in introductory text preceding par. (1), and, in pars. (1) and (2), deleted restriction which limited the grounds for suspension or revocation for false or misleading statements to the situation in which such statements were made for the purpose of obtaining a license.

Subsec. (b). Pub. L. 89–779, § 4(c), expanded the Administration's authority to issue cease and desist orders by authorizing their issuance against individuals who have not complied with provisions of this chapter and against both licensees and individuals who have violated or are about to violate this chapter or regulations issued pursuant thereto.

Subsec. (c). Pub. L. 89–779, § 4(d), inserted references to persons involved other than the licensee and to the revocation of licenses so as to conform the subsec. to the expansion of the Administration's authority to revoke licenses and to issue cease and desist orders to persons other than licensees under subsecs. (a) and (b).

Subsec. (e). Pub. L. 89–779, § 4(e), authorized the appeal from an order issued by the Administration under this section by other persons, besides the licensee, against whom an order is issued.

Subsec. (f). Pub. 89–779, § 4(f), provided that individuals as well as licensees are to be affected by subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687b. Investigations and examinations; power to subpena and take oaths and affirmations; aid of courts; examiners; reports

(a) Investigation of violations

The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Examinations and reports

Each small business investment company shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 [15

U.S.C. 80a–1 et seq.] to the extent necessary to avoid duplication in reporting requirements.

(c) Examinations of small business investment companies

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

(1) it has engaged solely in lawful activities and those contemplated by this subchapter;

(2) it has engaged in prohibited conflicts of interest;

(3) it has acquired or exercised illegal control of an assisted small business;

(4) it has made investments in small businesses for not less than 1 year;

(5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable;

(6) it has engaged in relending, foreign investments, or passive investments; or

(7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination (A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d) Valuations

(1) Frequency of valuations

(A) In general

Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) Material adverse changes

Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) Independent certification

(i) In general

Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) Audit requirements

Each audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) Valuation criteria

Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

(A) be established or approved by the Administrator; and

(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

(Pub. L. 85–699, title III, § 310, as added Pub. L. 87–341, § 9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89–779, § 5, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 90–104, title II, § 208, Oct. 11, 1967, 81 Stat. 271; Pub. L. 100–590, title I, § 104, Nov. 3, 1988, 102 Stat. 2992; Pub. L. 102–366, title IV, §§ 406(b), 407(a), 408(b), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 104–208, div. D, title II, § 208(f), (h)(1)(C), Sept. 30, 1996, 110 Stat. 3009–745, 3009–747; Pub. L. 105–135, title II, § 216, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, § 1(a)(9) [title IV, § 406], Dec. 21, 2000, 114 Stat. 2763, 2763A–691.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106–554 substituted ''1 year'' for ''five years''.

1997—Subsec. (b). Pub. L. 105–135 inserted after first sentence ''Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.''

1996—Subsec. (b). Pub. L. 104–208, § 208(f)(1), inserted ''which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations,'' after ''Investment Division of the Administration,'' in first sentence.

Subsec. (c)(4). Pub. L. 104–208, § 208(h)(1)(C), struck out ''not less than four years in the case of section 301(d) licensees and in all other cases,'' after ''small businesses for''.

Subsec. (d). Pub. L. 104–208, § 208(f)(2), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: *Provided*, That any com-

pany which does not have outstanding financial assistance under the provisions of this subchapter shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise.''

1992—Subsec. (b). Pub. L. 102–366, § 407(a), substituted ''Investment Division of'' for ''Administration by examiners selected or approved by''.

Subsec. (c)(5). Pub. L. 102–366, § 408(b), inserted before semicolon at end '', if such restriction is applicable''.

Subsec. (d). Pub. L. 102–366, § 406(b), added subsec. (d).

1988—Subsec. (b). Pub. L. 100–590 struck out second sentence, which read as follows: ''Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.''

Subsec. (c). Pub. L. 100–590 added subsec. (c).

1967—Subsec. (b). Pub. L. 90–104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89–779 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

TRANSFER OF RESOURCES

Section 407(b) of Pub. L. 102–366 provided that: ''Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 [15 U.S.C. 687b] shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration.''

§ 687c. Injunctions and other orders

(a) Grounds; jurisdiction of court

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85–699, title III, § 311, as added Pub. L. 87–341, § 9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89–779, § 6, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 98–620, title IV, § 402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

1966—Subsec. (c). Pub. L. 89–779 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure necessary to the purposes of this section.

(Pub. L. 85–699, title III, § 312, as added Pub. L. 88–273, § 6(a), Feb. 28, 1964, 78 Stat. 147; amended Pub. L. 94–305, title I, § 106(f), June 4, 1976, 90 Stat. 666; Pub. L. 104–208, div. D, title II,

§ 208(h)(1)(D), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 107–100, § 3, Dec. 21, 2001, 115 Stat. 966.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 struck out ''(including disclosure in the locality most directly affected by the transaction)'' after ''public disclosure''.

1996—Pub. L. 104–208, § 208(h)(1)(D), substituted ''shareholders, partners, or members'' for ''shareholders or partners'' and substituted ''shareholder, partner, or member'' for ''shareholder, or partner'' in two places.

1976—Pub. L. 94–305, § 106(f)(2), which directed the substitution of ''shareholder, or partner'' for ''or shareholders'' wherever appearing, was executed by making the substitution for ''or shareholder'' in two places to reflect the probable intent of Congress.

Pub. L. 94–305, § 106(f)(1), inserted ''or partners'' after ''to the shareholders''.

§ 687e. Removal or suspension of management officials

(a) Definition of "management official"

In this section, the term ''management official'' means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

(b) Removal of management officials

(1) Notice of removal

The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

(A) such management official—

(i) has willfully and knowingly committed any substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter; or

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

(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

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

(2) Contents of notice

A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon.

(3) Hearings

(A) Timing

A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

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

(ii) the Attorney General of the United States.

(B) Consent

Unless the management official shall appear at a hearing described in this paragraph in person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) Issuance of order of removal

(A) In general

In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(B) Effectiveness

An order under subparagraph (A) shall—

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

(ii) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(c) Authority to suspend or prohibit participation

(1) In general

The Administrator may, if the Administrator deems it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1) of this section, by written notice to such effect served upon the management official.

(2) Effectiveness

A suspension or prohibition under paragraph (1)—

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

(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b) of this section; and

(ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(3) Judicial review

Not later than 10 days after any management official has been suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee, or both, under paragraph (1), that management official may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under subsection (b) of this section, and such court shall have jurisdiction to stay such action.

(d) Authority to suspend on criminal charges

(1) In general

Whenever a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon that management official, suspend that management official from office or prohibit that management official from further participation in any manner in the management or conduct of the affairs of the licensee, or both.

(2) Effectiveness

A suspension or prohibition under paragraph (1) shall remain in effect until the subject information, indictment, or complaint is finally disposed of, or until terminated by the Administrator.

(3) Authority upon conviction

If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, then at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve upon the management official an order removing that management official, which removal shall become effective upon service of a copy of the order upon the licensee.

(4) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, pursuant to subsection (b) or (c) of this section.

(e) Notification to licensees

Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

(f) Procedural provisions; judicial review

(1) Hearing venue

Any hearing provided for in this section shall be—

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

(B) conducted in accordance with the provisions of chapter 5 of title 5.

(2) Issuance of orders

After a hearing provided for in this section, and not later than 90 days after the Administrator has notified the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section.

(3) Authority to modify orders

The Administrator may modify, terminate, or set aside any order issued under this section—

(A) at any time, upon such notice, and in such manner as the Administrator deems proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

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

(4) Judicial review

(A) In general

Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

(B) Petition for review

Any party to a hearing provided for in this section may obtain a review of any order issued pursuant to paragraph (2) (other than an order issued with the consent of the management official concerned, or an order issued under subsection (d) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of such order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

(C) Notification to administration

A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(D) Court jurisdiction

Upon the filing of a petition under subparagraph (A)—

(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in

whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

(ii) review of such proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28.

(E) Judicial review not a stay

The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

(Pub. L. 85–699, title III, § 313, as added Pub. L. 89–779, § 7, Nov. 6, 1966, 80 Stat. 1360; amended Pub. L. 107–100, § 5, Dec. 21, 2001, 115 Stat. 967.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (b)(1)(A)(i)(I), (II), see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 amended section catchline and text generally. Prior to amendment, text related to removal and suspension of directors and officers of licensees, with regard to written notice of intention to remove and grounds for removal; suspension pending completion of administrative proceedings; a hearing upon notice of intention to remove a director or officer and issuance of an order of removal; a stay of suspension and/or prohibition by a United States district court; suspension of directors and officers charged with felonies involving dishonesty or breach of trust; and procedural aspects of hearings provided for in this section.

§ 687f. Unlawful acts and omissions by officers, directors, employees, or agents

(a) Violation by licensee deemed violation by persons participating

Wherever a licensee violates any provision of this chapter or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) Breach of fiduciary duty

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Disqualification of officers and employees for dishonesty, fraud, or breach of trust

Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, § 314, as added Pub. L. 89–779, § 7, Nov. 6, 1966, 80 Stat. 1363.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 687g. Penalties and forfeitures

(a) Report violations

Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 687b(b) of this title, shall forfeit and pay to the United States a civil penalty of not more than $100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) Exemption from reporting requirements

The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85–699, title III, § 315, as added Pub. L. 89–779, § 7, Nov. 6, 1966, 80 Stat. 1364.)

§ 687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

(Pub. L. 85–699, title III, § 316, as added Pub. L. 89–779, § 7, Nov. 6, 1966, 80 Stat. 1364.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 661 of this title.

§§ 687i, 687j. Repealed. Pub. L. 104–208, div. D, title II, § 208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747

Section 687i, Pub. L. 85–699, title III, § 317, as added Pub. L. 92–595, § 2(g), Oct. 27, 1972, 86 Stat. 1316; amended Pub. L. 95–507, title I, § 103, Oct. 24, 1978, 92 Stat. 1758, established effective rate of interest of debentures purchased by Administration from small business investment company under authority of section 683(c) of this title.

Section 687j, Pub. L. 85–699, title III, § 318, as added Pub. L. 92–595, § 2(g), Oct. 27, 1972, 86 Stat. 1316, authorized Administration to extend benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which was owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by Administration.

§ 687k. Guaranteed obligations not eligible for purchase by Federal Financing Bank

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this subchapter,

(2) any obligation which is an interest in any obligation described in paragraph (1), or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title III, § 318, formerly § 320, as added Pub. L. 99–272, title XVIII, § 18004(a), Apr. 7, 1986, 100 Stat. 364; renumbered § 318, Pub. L. 104–208, div. D, title II, § 208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747.)

PRIOR PROVISIONS

A prior section 318 of Pub. L. 85–699 was classified to section 687j of this title, prior to repeal by Pub. L. 104–208.

§ 687*l*. Issuance and guarantee of trust certificates

(a) Issuance; debentures or participating securities composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this chapter, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 683(g) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures or guaranteed participating securities.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect a fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures or participating securities

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers

(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title III, § 319, formerly § 321, as added Pub. L. 99–272, title XVIII, § 18005(a), Apr. 7, 1986, 100 Stat. 364; amended Pub. L. 101–162, title V, (5), Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102–366, title IV, § 404, Sept. 4, 1992, 106 Stat. 1013; renumbered § 319 and amended Pub. L. 104–208, div. D, title II, §§ 205(b), 208(h)(1)(E), (F), Sept. 30, 1996, 110 Stat. 3009–738, 3009–747.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a) and (f)(2), see References in Text note set out under section 661 of this title.

PRIOR PROVISIONS

A prior section 319 of Pub. L. 85–699, which amended section 80a–18 of this title, was renumbered section 317.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 208(h)(1)(F)(i), struck out '', including companies operating under the authority of section 681(d) of this title,'' after ''investment companies''.

Subsec. (f)(1). Pub. L. 104–208, § 205(b)(1), struck out at end ''Such central registration shall include with respect to each sale—

''(A) identification of each small business investment company;

''(B) the interest rate or prioritized payment rate paid by the small business investment company;

''(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;

''(D) identification of each purchaser of the trust certificate;

''(E) the price paid by the purchaser for the trust certificate;

''(F) the interest rate on the trust certificate;

''(G) the fee of any agent for carrying out the functions described in paragraph (2); and

''(H) such other information as the Administration deems appropriate.''

Subsec. (f)(2). Pub. L. 104–208, § 208(h)(1)(F)(ii), inserted ''or investments in obligations of the United States'' after ''accounts''.

Subsec. (f)(5). Pub. L. 104–208, § 205(b)(2), added par. (5).

1992—Pub. L. 102–366 amended section generally, in subsec. (a) authorizing issuance of trust certificates representing ownership of participating securities, in subsec. (b) inserting provisions authorizing Administration to guarantee payment of redemption price of and priority payments on participating securities, in subsec. (e)(2) including participating securities within prohibition against preclusion or limitation of Administration's ownership rights, and in subsec. (f) in par. (1) substituting provisions relating to small business investment company for provisions relating to development company and requiring prioritized payment rate to be included in central registration requirements, and in par. (2) inserting provisions relating to participating securities, contracts to carry out pooling, and maintenance of commercial bank accounts.

1989—Subsec. (a). Pub. L. 101–162 inserted '', including companies operating under the authority of section 681(d) of this title,'' after ''investment companies''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Amendment by section 208 of Pub. L. 104–208 effective Sept. 30, 1996, see section 208(j) of Pub. L. 104–208, set out as a note under section 634 of this title.

REGULATIONS

Section 18005(b) of Pub. L. 99–272 provided that:

''(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act [15 U.S.C. 687*l*(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

''(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 [section 321; 15 U.S.C. 687*l*] of the Small Business Investment Act.''

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§ 687m. Periodic issuance of guarantees and trust certificates

The Administration shall issue guarantees under section 683 of this title and trust certificates under section 687*l* of this title at periodic intervals of not less than every 12 months and shall do so at such shorter intervals as its[1] deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

(Pub. L. 85–699, title III, § 320, formerly § 322, as added Pub. L. 100–590, title I, § 106(a), Nov. 3,

[1] So in original. Probably should be ''it''.

1988, 102 Stat. 2993; renumbered § 320 and amended Pub. L. 104–208, div. D, title II, § 208(h)(1)(E), (G), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title II, § 215(e), Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–9, § 2(d)(2), Apr. 5, 1999, 113 Stat. 18.)

PRIOR PROVISIONS

A prior section 320 of Pub. L. 85–699 was renumbered section 318 and is classified to section 687k of this title.

AMENDMENTS

1999—Pub. L. 106–9 substituted ''12 months'' for ''6 months''.

1997—Pub. L. 105–135 substituted ''6 months'' for ''three months''.

1996—Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 687*l* of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

§ 688. Repealed. Pub. L. 87–341, § 11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title III, § 309, Aug. 21, 1958, 72 Stat. 696, related to approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

§ 689. Definitions

In this part, the following definitions apply:

(1) Developmental venture capital

The term ''developmental venture capital'' means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term ''equity capital'' has the same meaning given such term in section 683(g)(4) of this title.

(2) Low-income individual

The term ''low-income individual'' means an individual whose income (adjusted for family size) does not exceed—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(3) Low-income geographic area

the[1] term ''low-income geographic area'' means—

(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

(i) the poverty rate for that census tract is not less than 20 percent;

(ii) in the case of a tract—

(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(B) any area located within—

(i) a HUBZone (as defined in section 632(p) of this title and the implementing regulations issued under that section);

(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(4) New Markets Venture Capital company

The term ''New Markets Venture Capital company'' means a company that—

(A) has been granted final approval by the Administrator under section 689c(e) of this title; and

(B) has entered into a participation agreement with the Administrator.

(5) Operational assistance

The term ''operational assistance'' means management, marketing, and other technical assistance that assists a small business concern with business development.

(6) Participation agreement

The term ''participation agreement'' means an agreement, between the Administrator and a company granted final approval under section 689c(e) of this title, that—

(A) details the company's operating plan and investment criteria; and

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(7) Specialized small business investment company

The term ''specialized small business investment company'' means any small business investment company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

[1] So in original. Probably should be capitalized.

(C) was licensed under section 681(d) of this title, as in effect before September 30, 1996.

(8) State

The term ''State'' means such[2] of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85–699, title III, § 351, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653.)

§ 689a. Purposes

The purposes of the New Markets Venture Capital Program established under this part are—

(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

(A) to enter into participation agreements with New Markets Venture Capital companies;

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, § 352, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§ 689b. Establishment

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 689c(e) of this title for the purposes set forth in section 689a of this title;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 689d of this title; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 689g of this title.

(Pub. L. 85–699, title III, § 353, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§ 689c. Selection of New Markets Venture Capital companies

(a) Eligibility

A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

(1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

(3) the company has a primary objective of economic development of low-income geographic areas.

(b) Application

To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) of this section shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;

(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;

(3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and

(8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b) of this section, the Administrator shall, in accordance with this subsection, conditionally approval[1] companies

[2] So in original. Probably should be ''each''.

[1] So in original. Probably should be ''approve''.

to participate in the New Markets Venture Capital Program.

(2) Selection criteria

In selecting companies under paragraph (1), the Administrator shall consider the following:

(A) The likelihood that the company will meet the goal of its business plan.

(B) The experience and background of the company's management team.

(C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.

(D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.

(E) The likelihood that the company will be able to satisfy the conditions under subsection (d) of this section.

(F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.

(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

(H) Any other factors deemed appropriate by the Administrator.

(3) Nationwide distribution

The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

(d) Requirements to be met for final approval

The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

(1) Capital requirement

Each conditionally approved company shall raise not less than $5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

(C) Limitation

In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c) of this section, either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) of this section on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) of this section on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, § 354, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§ 689d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to be[1] extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

(Pub. L. 85–699, title III, § 355, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658.)

§ 689e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2) of this section.

(e) Subrogation and ownership rights

(1) Subrogation

In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

[1] So in original. Probably should be ''the''.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, § 356, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658.)

§ 689f. Fees

Except as provided in section 689e(d) of this title, the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

(Pub. L. 85–699, title III, § 357, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–660.)

§ 689g. Operational assistance grants

(a) In general

(1) Authority

In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grants to specialized small business investment companies

(A) Authority

In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) Use of funds

The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) Submission of plans

A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) Grant amount

(A) New Markets Venture Capital companies

The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under section 689c(d)(2) of this title.

(B) Other entities

The amount of a grant made under this subsection to any entity other than a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Market Venture Capital companies set forth in section 689c(d)(2) of this title.

(5) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a[1] cash or in kind), other then[2] those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

(Pub. L. 85–699, title III, § 358, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–660.)

REFERENCES IN TEXT

The effective date of the New Markets Venture Capital Program Act of 2000, referred to in subsec. (a)(3)(A),

[1] So in original. The article probably should not appear.

[2] So in original. Probably should be ''than''.

(B), probably means the date of enactment of section 1 of H.R. 5663, as enacted by Pub. L. 106–554, §1(a)(8), which was approved Dec. 21, 2000.

§ 689h. Bank participation

(a) In general

Except as provided in subsection (b) of this section, any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) Limitation

No bank described in subsection (a) of this section may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, §359, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§ 689i. Federal Financing Bank

Section 687k of this title shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

(Pub. L. 85–699, title III, §360, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§ 689j. Reporting requirement

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

(Pub. L. 85–699, title III, §361, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§ 689k. Examinations

(a) In general

Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Small Business Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) [1] Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(d) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

(Pub. L. 85–699, title III, §362, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–662.)

§ 689*l*. Injunctions and other orders

(a) In general

Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Jurisdiction

In any proceeding under subsection (a) of this section, the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Administrator as trustee or receiver

(1) Authority

The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) Appointment

Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise in-

[1] So in original. No par. (2) has been enacted.

appropriate by reason of the special circumstances involved.

(Pub. L. 85–699, title III, § 363, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–662.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689m. Additional penalties for noncompliance

(a) In general

With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this chapter, of any regulation issued under this chapter, or of any participation agreement entered into under this chapter, the Administrator may in accordance with this section—

(1) void the participation agreement between the Administrator and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this chapter.

(b) Adjudication of noncompliance

(1) In general

Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a) of this section, a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) Parties authorized to file causes of action

Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

(Pub. L. 85–699, title III, § 364, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689n. Unlawful acts and omissions; breach of fiduciary duty

(a) Parties deemed to commit a violation

Whenever any New Markets Venture Capital company violates any provision of this chapter, of a regulation issued under this chapter, or of a participation agreement entered into under this chapter, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) Fiduciary duties

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) Unlawful acts

Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person[1] continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, § 365, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689*o*. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

(Pub. L. 85–699, title III, § 366, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§ 689p. Regulations

The Administrator may issue such regulations as it deems necessary to carry out the provi-

[1] So in original. Probably should be followed by ''to''.

sions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, § 367, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§ 689q. Authorization of appropriations

(a) In general

There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee $150,000,000 of debentures under this part.

(2) $30,000,000 to make grants under this part.

(b) Funds collected for examinations

Funds deposited under section 689k(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 689k of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, § 368, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

PART C—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM

§ 690. Definitions

In this part:

(1) Operational assistance

The term ''operational assistance'' means management, marketing, and other technical assistance that assists a small business concern with business development.

(2) Participation agreement

The term ''participation agreement'' means an agreement, between the Administrator and a company granted final approval under section 690c(e) of this title, that—

(A) details the operating plan and investment criteria of the company; and

(B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) Renewable energy

The term ''renewable energy'' means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(4) Renewable Fuel Capital Investment company

The term ''Renewable Fuel Capital Investment company'' means a company—

(A) that—

(i) has been granted final approval by the Administrator under section 690c(e) of this title; and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 690c(c) of this title.

(5) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(6) Venture capital

The term ''venture capital'' means capital in the form of equity capital investments, as that term is defined in section 683(g)(4) of this title.

(Pub. L. 85–699, title III, § 381, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1774.)

EFFECTIVE DATE

Part effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§ 690a. Purposes

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged[1] such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, § 382, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1775.)

§ 690b. Establishment

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

[1] So in original. Probably should be followed by ''in''.

(1) enter into participation agreements for the purposes described in section 690a of this title; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 690d of this title.

(Pub. L. 85–699, title III, § 383, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1776.)

§ 690c. Selection of Renewable Fuel Capital Investment companies

(a) Eligibility

A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company if the company—

(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) has a management team with experience in alternative energy financing or relevant venture capital financing; and

(3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) Application

A company desiring to be designated as a Renewable Fuel Capital Investment company shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of whether and to what extent the company meets the criteria under subsection (c)(2) and the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and

(8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as Renewable Fuel Capital Investment companies.

(2) Selection criteria

In conditionally approving companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that the company will meet the goal of its business plan;

(B) the experience and background of the management team of the company;

(C) the need for venture capital investments in the geographic areas in which the company intends to invest;

(D) the extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest;

(E) the likelihood that the company will be able to satisfy the conditions under subsection (d);

(F) the extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest;

(G) the strength of the proposal by the company to provide operational assistance under this part as the proposal relates to the ability of the company to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or contractors; and

(H) any other factor determined appropriate by the Administrator.

(3) Nationwide distribution

From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one company from each geographic region of the Administration.

(d) Requirements to be met for final approval

(1) In general

The Administrator shall grant each conditionally approved company 2 years to satisfy the requirements of this subsection.

(2) Capital requirement

Each conditionally approved company shall raise not less than $3,000,000 of private capital or binding capital commitments from 1 or more investors (which shall not be departments or agencies of the Federal Government) who meet criteria established by the Administrator.

(3) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally

approved company shall have binding commitments (for contribution in cash or in-kind)—

(i) from sources other than the Administration that meet criteria established by the Administrator; and

(ii) payable or available over a multiyear period determined appropriate by the Administrator (not to exceed 10 years).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

(C) Limitation

The total amount of a[1] in-kind contributions by a company shall be not more than 50 percent of the total contributions by a company.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the applicant to operate as a Renewable Fuel Capital Investment company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in paragraph (1) of that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, § 384, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1776.)

§ 690d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any Renewable Fuel Capital Investment company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it determines appropriate, except that—

(1) the term of any debenture guaranteed under this section shall not exceed 15 years; and

(2) a debenture guaranteed under this section—

(A) shall carry no front-end or annual fees;

(B) shall be issued at a discount;

(C) shall require no interest payments during the 5-year period beginning on the date the debenture is issued;

(D) shall be prepayable without penalty after the end of the 1-year period beginning on the date the debenture is issued; and

(E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a Renewable Fuel Capital Investment company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than a department or agency of the Federal Government.

(Pub. L. 85–699, title III, § 385, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1778.)

§ 690e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it determines appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

If a debenture in a trust or pool is prepaid, or in the event of default of such a debenture,

[1] So in original. The article probably should not appear.

the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) Subrogation and ownership rights

(1) Subrogation

If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including, not withstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, § 386, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1779.)

§ 690f. Fees

(a) In general

Except as provided in section 690e(d) of this title, the Administrator may charge such fees as it determines appropriate with respect to any guarantee or grant issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this part, which amounts shall be paid to and retained by the Administration.

(b) Offset

The Administrator may, as provided by section 690g of this title, offset fees charged and collected under subsection (a).

(Pub. L. 85–699, title III, § 387, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1780.)

§ 690g. Fee contribution

(a) In general

To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the Renewable Fuel Capital Investment companies under section 690f of this title.

(b) Annual adjustment

Each fee contribution under subsection (a) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under subsection (a) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during that fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator determines appropriate.

(Pub. L. 85–699, title III, § 388, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1780.)

§ 690h. Operational assistance grants

(a) In general

(1) Authority

The Administrator may make grants to Renewable Fuel Capital Investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grant amount

The amount of a grant made under this subsection to a Renewable Fuel Capital Investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in-kind) raised by the company under section 690c(d)(2) of this title; or

(B) $1,000,000.

(4) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(5) Grants to conditionally approved companies

(A) In general

Subject to subparagraphs (B) and (C), upon the request of a company conditionally approved under section 690c(c) of this title, the Administrator shall make a grant to the company under this subsection.

(B) Repayment by companies not approved

If a company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) Deduction of grant to approved company

If a company receives a grant under this paragraph and receives final approval under section 690c(e) of this title, the Administrator shall deduct the amount of the grant from the total grant amount the company receives for operational assistance.

(D) Amount of grant

No company may receive a grant of more than $100,000 under this paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to Renewable Fuel Capital Investment companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a[1] cash or in kind), other then[2] those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, § 389, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1781.)

§ 690i. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any Renewable Fuel Capital Investment company, or in any entity established to invest solely in Renewable Fuel Capital Investment companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, § 390, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690j. Federal Financing Bank

Notwithstanding section 687k of this title, the Federal Financing Bank may acquire a debenture issued by a Renewable Fuel Capital Investment company under this part.

(Pub. L. 85–699, title III, § 391, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690k. Reporting requirement

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company makes, under this part, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or[1] renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

(Pub. L. 85–699, title III, § 392, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690*l*. Examinations

(a) In general

Each Renewable Fuel Capital Investment company that participates in the program estab-

[1] So in original. The article probably should not appear.

[2] So in original. Probably should be ''than''.

[1] So in original. Probably should be ''of''.

lished under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(2) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

(Pub. L. 85–699, title III, § 393, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690m. Miscellaneous

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 687a, 687c, 687d, and 687f of this title and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a Renewable Fuel Capital Investment company shall be subject to the requirements of such sections.

(Pub. L. 85–699, title III, § 394, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690n. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, § 395, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690*o*. Regulations

The Administrator may issue such regulations as the Administrator determines necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, § 396, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690p. Authorizations of appropriations

(a) In general

Subject to the availability of appropriations, the Administrator is authorized to make $15,000,000 in operational assistance grants under section 690h of this title for each of fiscal years 2008 and 2009.

(b) Funds collected for examinations

Funds deposited under section 690*l*(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 690*l* of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, § 397, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690q. Termination

The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.

(Pub. L. 85–699, title III, § 398, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1783.)

SUBCHAPTER IV—STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES

§ 691. Repealed. Pub. L. 87–341, § 11(f), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title IV, § 401, Aug. 21, 1958, 72 Stat. 696, related to conversion of any investment company, or any State development company, into a small business investment company.

SUBCHAPTER IV–A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§ 692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property

(a) Nonavailability of guarantees from other sources; participation with qualified sureties

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there ex-

ists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) Escrow; default; additional discretionary provisions

In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part, as the Administrator may in his discretion require.

(Pub. L. 85–699, title IV, § 401, as added Pub. L. 89–117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 482; amended Pub. L. 90–104, title II, § 209, Oct. 11, 1967, 81 Stat. 271; Pub. L. 91–609, title IX, § 911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Subsecs. (b), (c)(4). Pub. L. 91–609 substituted ''part'' for ''title''.

1967—Subsec. (a). Pub. L. 90–104 struck out from introductory text ''that are (1) eligible for loans under section 636(b)(3) of this title, or (2) eligible for loans under subchapter IV of chapter 34 of Title 42,'' after ''small business concerns''.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

§ 693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

Without limiting the authority conferred upon the Administrator and the Administration by section 671 of this title, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 634(b) of this title with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

(Pub. L. 85–699, title IV, § 402, as added Pub. L. 89–117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 483; amended Pub. L. 91–609, title IX, § 911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Pub. L. 91–609 substituted ''part'' for ''title''.

§ 694. Repealed. Pub. L. 100–590, title I, § 111(b), Nov. 3, 1988, 102 Stat. 2995

Section, Pub. L. 85–699, title IV, § 403, as added Pub. L. 89–117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 484; amended Pub. L. 91–609, title IX, § 911(a)(3), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93–386, § 6(a)(2), Aug. 23, 1974, 88 Stat. 747; Pub. L. 94–305, title I, § 103, June 4, 1976, 90 Stat. 665; Pub. L. 95–89, title I, § 103, Aug. 4, 1977, 91 Stat. 556, provided for revolving fund for commercial or industrial lease guarantees.

TRANSFER OF REMAINING LEASE GUARANTEE FUND MONEYS

Section 111(b) of Pub. L. 100–590 provided in part that: ''Any moneys remaining in the Lease Guarantee Fund on the date of enactment of this Act [Nov. 3, 1988] shall be transferred to the Small Business Administration's business loan and investment fund.''

§ 694–1. Planning design or installation of pollution control facilities

(a) Definitions

For purposes of this section, the term—

(1) ''pollution control facilities'' means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or

storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

(2) ''person'' includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

(3) ''qualified contract'' means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

(b) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property shall be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount be less than 1 per centum or more than 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(d) Requirements of Administration; escrow; default; discretionary provisions

In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Assignment of guarantee

Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Application of section 693 of this title

Section 693 of this title shall apply to the administration of this section.

(Pub. L. 85–699, title IV, § 404, as added Pub. L. 94–305, title I, § 102, June 4, 1976, 90 Stat. 663; amended Pub. L. 98–473, title I, § 115, Oct. 12, 1984, 98 Stat. 1967.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–473, § 115(1), (2), substituted ''shall be issued'' for ''may be issued'' and in-

serted ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired".

Subsec. (c). Pub. L. 98–473, § 115(3), substituted "be less than 1 per centum or more than 3½ per centum" for "exceed 3½ per centum".

§ 694–2. Revolving fund for qualified contract guarantees; investment of idle funds

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 694–1 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694–1 of this title shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 694–1 of this title shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(Pub. L. 85–699, title IV, § 405, as added Pub. L. 94–305, title I, § 102, June 4, 1976, 90 Stat. 665; amended Pub. L. 95–89, title I, § 104, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96–302, title I, § 112, July 2, 1980, 94 Stat. 837.)

AMENDMENTS

1980—Pub. L. 96–302 inserted investment of idle funds provision.

1977—Pub. L. 95–89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $15,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 694–2 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

PART B—SURETY BOND GUARANTEES

§ 694a. Definitions

As used in this part—

(1) The term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) The term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) The term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) The term "surety" means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(5) The term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) The term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) The term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) The term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(Pub. L. 85–699, title IV, § 410, as added Pub. L. 91–609, title IX, § 911(a)(4), Dec. 31, 1970, 84 Stat. 1812; amended Pub. L. 95–507, title I, § 110, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Par. (4)(D). Pub. L. 95–507 added cl. (D).

TECHNICAL ASSISTANCE IN CONNECTION WITH CONSTRUCTION CONTRACTS; AUTHORIZATION OF APPROPRIATIONS

Section 911(b) of Pub. L. 91–609 authorized the Secretary of Housing and Urban Development to take such steps and carry out such activities as he determined to be necessary or desirable to provide, either directly or by contract or other arrangement, technical assistance to any contractor or subcontractor for whom a bid, payment, or performance bond is guaranteed under part B of title IV of the Small Business Investment Act of 1958 [this part] in connection with any construction contract, in order to assist such contractor or subcontractor in obtaining or carrying out such contract, and authorized to be appropriated for each of the first three fiscal years ending after the date of the enactment of this Act [Dec. 31, 1970] such sums, not to exceed $1,500,000, as were necessary to enable the Secretary to carry out his functions under paragraph (1).

§ 694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal's breach of bond

(1) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed $2,000,000.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

(3) The Administration may authorize any surety, without further administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d) of this section.

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Indemnification of surety against loss from avoiding breach

Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a) of this section, the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a) of this section: *Provided, however*—

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3) of this section; and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a) of this section.

(c) Limitation of liability

Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 70 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3) of this section;

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) of this section or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the administration's[1] specific approval for the issuance of a bond, if—

(A) the total amount of the contract at the time of execution of the bond or bonds is $100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 637(d) of this title, or to a qualified HUBZone small business concern (as defined in section 632(p) of this title); or

(4) determined pursuant to subsection (b) of this section, if applicable.

(d) Regulations

The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e) Reimbursement of surety; conditions

Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds $2,000,000,

(3) the surety has breached a material term or condition of such guarantee[2] agreement, or

[1] So in original. Probably should be capitalized.

[2] So in original. Probably should be followed by ''or''.

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d) of this section.

(f) Procedure for reimbursement

The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit

(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) of this section shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(Pub. L. 85–699, title IV, § 411, as added Pub. L. 91–609, title IX, § 911(a)(4), Dec. 31, 1970, 84 Stat. 1813; amended Pub. L. 93–386, §§ 6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749; Pub. L. 95–507, title I, § 111, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 96–302, title I, § 115, July 2, 1980, 94 Stat. 839; Pub. L. 99–272, title XVIII, § 18014, Apr. 7, 1986, 100 Stat. 370; Pub. L. 100–590, title II, §§ 202–204, Nov. 3, 1988, 102 Stat. 3007–3009; Pub. L. 104–208, div. D, title II, § 206(a), Sept. 30, 1996, 110 Stat. 3009–738; Pub. L. 105–135, title VI, § 604(d), Dec. 2, 1997, 111 Stat. 2633; Pub. L. 106–554, § 1(a)(9) [title VIII, § 805(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–705; Pub. L. 108–447, div. K, title II, § 203(a), (b), Dec. 8, 2004, 118 Stat. 3465, 3466.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–447, § 203(a), substituted ''total work order or contract amount at the time of bond execution that does not exceed'' for ''contract up to''.

Subsec. (g)(3). Pub. L. 108–447, § 203(b), substituted ''every three years'' for ''each year''.

2000—Subsecs. (a)(1), (e)(2). Pub. L. 106–554 substituted ''$2,000,000'' for ''$1,250,000''.

1997—Subsec. (c)(3)(B). Pub. L. 105–135 inserted '', or to a qualified HUBZone small business concern (as defined in section 632(p) of this title)'' before semicolon.

1996—Subsec. (a)(5). Pub. L. 104–208 added par. (5).

1988—Subsec. (a). Pub. L. 100–590, § 202, amended subsec. (a) generally, substituting pars. (1) to (4) for former pars. (1) to (6).

Subsec. (b). Pub. L. 100–590, § 203(c), added par. (2), redesignated former par. (2) as (3), struck out former par. (3) which prohibited the making subsequent to two years after Oct. 24, 1978, of new agreements to indemnify, and inserted concluding provision: ''In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a) of this section.''

Subsec. (c). Pub. L. 100–590, § 203(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which subsection (b) of this section applies, the amount determined under subsection (b) of this section.''

Subsec. (e)(3), (4). Pub. L. 100–590, § 203(c), added pars. (3) and (4).

Subsec. (g). Pub. L. 100–590, § 204, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.''

1986—Subsecs. (a), (e)(2). Pub. L. 99–272 substituted ''$1,250,000'' for ''$1,000,000''.

1980—Subsec. (c). Pub. L. 96–302 struck out ''to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract'' after ''paid by the surety'' in cl. (1).

1978—Subsec. (a). Pub. L. 95–507 amended subsec. (a) generally, striking out requirement that the Administration consult with the Secretary of Housing and Urban Development, and inserting authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95–507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95–507 substituted provisions relating to the limitation of the Administration's guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95–507 substituted provisions relating to regulations for participating sureties for provisions relating to the application of section 693 of this title in the administration of this section.

Subsecs. (e) to (i). Pub. L. 95–507 added subsecs. (e) to (i).

1974—Subsec. (a). Pub. L. 93–386, § 6(a)(3), substituted ''$1,000,000'' for ''$500,000''.

Subsec. (c). Pub. L. 93–386, § 11, inserted provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 206(b) of div. D of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to ap-

plications received (or pending substantive evaluation) on or after October 1, 1995.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100–590, title II, § 207, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101–574, title II, § 216(a), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 103–403, title III, § 302, Oct. 22, 1994, 108 Stat. 4188; Pub. L. 104–36, § 7, Oct. 12, 1995, 109 Stat. 297; Pub. L. 105–135, title V, § 503, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106–554, § 1(a)(9) [title VIII, § 805(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–706, which provided that the provisions contained in section 694b(a)(3) of this title would cease to be effective after Sept. 30, 2003, was repealed by Pub. L. 108–447, div. K, title II, § 203(c), Dec. 8, 2004, 118 Stat. 3466.

Section 209 of title II of Pub. L. 100–590 provided that: ''Except as otherwise provided in this title, the provisions of this title [amending this section and section 694c of this title and enacting provisions set out as notes under this section], shall become effective upon expiration of one hundred and eighty days after the date of its enactment [Nov. 3, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

REGULATIONS

Section 205 of title II of Pub. L. 100–590 provided that: ''The Administration shall promulgate final regulations to implement the amendments made by this title [amending this section and section 694c of this title] not later than one hundred and eighty days after the date of the enactment of this Act [Nov. 3, 1988].''

SMALL BUSINESS ACCESS TO SURETY BONDING SURVEY

Pub. L. 102–366, title III, subtitle A, Sept. 4, 1992, 106 Stat. 1002–1005, known as the Small Business Access to Surety Bonding Survey Act of 1992, directed Comptroller General to conduct a comprehensive survey of business firms, from a statistically valid sample of business firms developed from the most recent list of construction firms maintained by Dun and Bradstreet Company and using a questionnaire with specifically designated questions, to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms and to submit a report to Congress, not later than 18 months after Sept. 4, 1992, which report was to contain a summary of responses of business firms to the survey and a description of any trends found by Comptroller General in such responses, which specific information on responses and trends of small business concerns, small business concerns owned and controlled by women, and small business concerns owned and controlled by socially and economically disadvantaged individuals.

EVALUATION OF PREFERRED SURETY BOND GUARANTEE PROGRAM; REPORT

Section 206 of title II of Pub. L. 100–590, as amended by Pub. L. 101–574, title II, § 216(b), Nov. 15, 1990, 104 Stat. 2823, directed Comptroller General, not later than 3 years after Nov. 3, 1988, to transmit a report to Congress evaluating the preferred surety bond guarantee program, with such report to be transmitted not later than Mar. 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.

§ 694c. Revolving fund for surety bond guarantees

(a) There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

(Pub. L. 85–699, title IV, § 412, as added Pub. L. 93–386, § 6(a)(4), Aug. 23, 1974, 88 Stat. 747; amended Pub. L. 94–305, title I, § 113, June 4, 1976, 90 Stat. 667; Pub. L. 95–14, § 4, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95–89, title I, § 105, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96–302, title I, § 111, July 2, 1980, 94 Stat. 837; Pub. L. 100–590, title II, § 208, Nov. 3, 1988, 102 Stat. 3009.)

AMENDMENTS

1988—Pub. L. 100–590 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–302 repealed investment of idle funds provision, which is covered in section 694–2 of this title.

1977—Pub. L. 95–89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $110,000,000 appropriation of capital for the fund; and payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year.

Pub. L. 95–14 substituted ''$110,000,000'' for ''$56,500,000''.

1976—Pub. L. 94–305 substituted ''$56,500,000'' for ''$35,000,000''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–590 effective on expiration of 180 days after Nov. 3, 1988, see section 209 of Pub. L. 100–590, set out as an Effective and Termination Dates of 1988 Amendment note under section 694b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

§ 695. State development companies

(a) Congressional finding and declaration of purpose

The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this subchapter.

(b) Loans; obligations of development companies

The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall

be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) Maximum loans to development companies

The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d) Eligibility for assistance

In order to qualify for assistance under this subchapter, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

(3) the achievement of one or more of the following public policy goals:

(A) business district revitalization,

(B) expansion of exports,

(C) expansion of minority business development or women-owned business development,

(D) rural development,

(E) expansion of small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, especially service-disabled veterans, as defined in such section 632(q) of this title,

(F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

(G) changes necessitated by Federal budget cutbacks, including defense related industries,

(H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,

(I) reduction of energy consumption by at least 10 percent,

(J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact, or

(K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers.

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e) Creation or retention of jobs

(1) A project meets the objective set forth in subsection (d)(1) of this section if the project creates or retains one job for every $50,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d) of this section, if the development company's portfolio of outstanding debentures creates or retains one job for every $50,000 guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

(6) As used in this subsection, the term ''small manufacturer'' means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(B) all of the production facilities of which are located in the United States.

(Pub. L. 85–699, title V, § 501, Aug. 21, 1958, 72 Stat. 696; Pub. L. 100–590, title I, § 115(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997; Pub. L. 101–574, title II, § 214(a), (b), Nov. 15, 1990, 104 Stat. 2821; Pub. L. 106–50, title IV, § 405, Aug. 17, 1999, 113 Stat. 246; Pub. L. 106–554, § 1(a)(9) [title III, § 302], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 108–447, div. K, title I, § 105, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, § 1204(a), Dec. 19, 2007, 121 Stat. 1772.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

2007—Subsec. (d)(3). Pub. L. 110–140, §1204(a)(4), inserted the following concluding provisions: ''In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.''

Subsec. (d)(3)(I) to (K). Pub. L. 110–140, §1204(a)(1)–(3), added subpars. (I) to (K).

2004—Subsec. (e). Pub. L. 108–447 added subsec. (e).

2000—Subsec. (d)(3)(C). Pub. L. 106–554 inserted ''or women-owned business development'' before comma at end.

1999—Subsec. (d)(3)(E)–(H). Pub. L. 106–50 added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

1990—Subsec. (a). Pub. L. 101–574, §214(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company program authorized by this subchapter. In order to carry out this objective, the Administration is hereby directed to place greater emphasis on the needs of rural areas and the promotion of the development company program in such areas, and is further directed to develop a plan for greater outreach of procurement and export trade seminars in such areas. As used in this subchapter, the term 'rural areas' means those localities with populations of less than 20,000.''

Subsec. (d). Pub. L. 101–574, §214(b), added subsec. (d).

1988—Pub. L. 100–590 inserted ''State development companies'' as section catchline, added subsec. (a), and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Assistance made available under any financings made under this subchapter during 2-year period beginning Oct. 1, 2002, to be treated as a separate program of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) only, see section 6(c) of Pub. L. 107–100, set out as a note under section 636 of this title.

LOAN LIQUIDATION PILOT PROGRAM

Pub. L. 104–208, div. D, title II, §204, Sept. 30, 1996, 110 Stat. 3009–736, provided that:

''(a) IN GENERAL.—The Administrator shall carry out a loan liquidation pilot program (in this section referred to as the 'pilot program') in accordance with the requirements of this section.

''(b) SELECTION OF DEVELOPMENT COMPANIES.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Administrator shall establish a pilot program under which certain development companies authorized to make loans and issue debentures under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] are selected by the Administrator in accordance with this subsection to carry out loan liquidations.

''(2) CONFLICTS OF INTEREST.—The development companies selected under paragraph (1) shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender.

''(3) QUALIFICATIONS.—In order to qualify to participate in the pilot program under this section, each development company shall—

''(A) have not less than 6 years of experience in the program established by title V of the Small Business Investment Act of 1958;

''(B) have made, during the 6 most recent fiscal years, an average of not less than 10 loans per year through the program established by such title V of the Small Business Investment Act of 1958;

''(C) have not less than 2 years of experience in liquidating loans under the authority of a Federal, State, or other lending program; and

''(D) meet such other requirements as the Administration may establish.

''(c) AUTHORITY OF DEVELOPMENT COMPANIES.—The development companies selected under subsection (b) shall, for loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] that are in default after the date of enactment of this Act [Sept. 30, 1996], be authorized to—

''(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds, subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property: *Provided*, That the Administrator shall approve or deny a request for such purchase within a period of 10 business days; and

''(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices pursuant to a liquidation plan approved by the administrator in advance of its implementation. If the administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

''(d) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the pilot program, the Administrator shall—

''(1) have full authority to rescind the authority granted any development company under this section upon a 10-day written notice stating the reasons for the rescission; and

''(2) not later than 90 days after the admission of the development companies specified in subsection (b), implement the pilot program.

''(e) REPORT.—

''(1) IN GENERAL.—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]. The report shall include information relating to—

''(A) the total dollar amount of each loan and project liquidated;

''(B) the total dollar amount guaranteed by the Administration;

''(C) total dollar losses;

''(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project; and

''(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

''(2) REPORTING PERIOD.—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 [sic] fiscal quarters of the pilot program's operation after the date of implementation.''

[Section 204 of title II of div. D of Pub. L. 104–208, set out above, to cease to have effect beginning on the date on which final regulations are issued to carry out section 697g of this title, see section 1(a)(9) [title III, §307(b)] of Pub. L. 106–554, set out as a Regulations note under section 697g of this title.]

§ 696. Loans for plant acquisition, construction, conversion and expansion

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided*, *however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) $1,500,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

(ii) $2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 695(d)(3) of this title;

(iii) $4,000,000 for each project of a small manufacturer;

(iv) $4,000,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

(v) $4,000,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term ''small manufacturer'' means a small business concern—

(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(ii) all of the production facilities of which are located in the United States.

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 697 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

(I) State or local governments;

(II) banks or other financial institutions;

(III) foundations or other not-for-profit institutions; or

(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses[1] (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter shall provide—

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this subchapter, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(ii) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than $250,000; or

(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is $250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small

[1] So in original. Probably should be ''clause''.

business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subchapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(Pub. L. 85–699, title V, § 502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87–27, § 26, May 1, 1961, 75 Stat. 63; Pub. L. 87–341, § 10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94–305, title I, §§ 108(a), 110, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–507, title I, § 112, Oct. 24, 1978, 92 Stat. 1760; Pub. L. 97–35, title XIX, § 1909, Aug. 13, 1981, 95 Stat. 778; Pub. L. 100–418, title VIII, § 8007(b), Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–590, title I, § 116(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997, 2998; Pub. L. 101–574, title II, § 214(c), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 104–208, div. D, title II, § 202(a), Sept. 30, 1996, 110 Stat. 3009–734; Pub. L. 105–135, title II, § 221, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, § 1(a)(9) [title II, § 208(b), title III, § 303, title VIII, § 802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–683, 2763A–684, 2763A–702; Pub. L. 108–447, div. K, title I, § 104, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, § 1204(b), Dec. 19, 2007, 121 Stat. 1772.)

AMENDMENTS

2007—Par. (2)(A)(iv), (v). Pub. L. 110–140 added cls. (iv) and (v).

2004—Par. (2). Pub. L. 108–447 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Loans made by the Administration under this section shall be limited to $1,000,000 for each such identifiable small business concern, except loans meeting the criteria specified in section 695(d)(3) of this title, which shall be limited to $1,300,000 for each such identifiable small business concern.''

2000—Par. (2). Pub. L. 106–554, § 1(a)(9) [title III, § 303], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Loans made by the Administration under this section shall be limited to $750,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern.''

Par. (3)(E). Pub. L. 106–554, § 1(a)(9) [title II, § 208(b)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (6). Pub. L. 106–554, § 1(a)(9) [title VIII, § 802(b)], added par. (6).

1997—Par. (1). Pub. L. 105–135, § 221(1), added par. (1) and struck out former par. (1) which read as follows: ''The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration.''

Par. (3)(D), (E). Pub. L. 105–135, § 221(2), added subpars. (D) and (E).

Par. (5). Pub. L. 105–135, § 221(3), added par. (5).

1996—Par. (3). Pub. L. 104–208 inserted heading and amended text of par. (3) generally. Prior to amendment, text read as follows: ''Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

''(A) State or local governments;

''(B) banks or other financial institutions;

''(C) foundations or other not-for-profit institutions; or

''(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter.''

1990—Par. (2). Pub. L. 101–574 struck out period at end and inserted '', except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern.''

1988—Pub. L. 100–590, § 116(b)(1), inserted ''Loans for plant acquisition, construction, conversion, and expansion'' as section catchline.

Par. (2). Pub. L. 100–418 substituted ''$750,000'' for ''$500,000''.

Par. (4). Pub. L. 100–590, § 116(a), added par. (4).

1981—Pars. (1) to (4). Pub. L. 97–35 redesignated pars. (2) to (4) as (1) to (3), respectively. Former par. (1), which provided that all loans made shall be so secured as reasonably to assure repayment and that in agreements to participate in loans on a deferred basis, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement, was struck out.

Par. (5). Pub. L. 97–35 struck out par. (5) which provided that loans, including extensions and renewals, may be made for a period not exceeding twenty-five years and that an extension may be granted up to ten years, if such extension will aid in the orderly liquidation of the loan, and that the Administration may fix the rate of interest.

1978—Par. (4). Pub. L. 95–507 inserted provisions relating to derivation of community injection funds.

1976—Pub. L. 94–305, § 108(a), inserted ''acquisition,'' after ''plant'' in introductory text.

Par. (3). Pub. L. 94–305, § 110, substituted ''$500,000'' for ''$350,000''.

1961—Par. (3). Pub. L. 87–341, § 10(1), substituted ''$350,000'' for ''$250,000''.

Par. (5). Pub. L. 87–341, § 10(2), substituted ''twenty-five'' for ''ten'' before ''years plus such additional period''.

Par. (6). Pub. L. 87–27 struck out par. (6) which provided for termination of authority of the Administration to make loans to local development companies after June 30, 1961.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

§ 697. Development company debentures

(a) Guarantees; Administration authority; regulatory terms and conditions; full faith and credit; subordination of debentures

(1) Except as provided in subsection (b) of this section, the Administration may guarantee the timely payment of all principal and interest as

scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may be regulation determine to be appropriate: *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) of this section are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

(3) The full faith and credit of the United States in pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) Statutory terms and conditions

No guarantee may be made with respect to any debenture under subsection (a) of this section unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 696 of this title;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 683(b) of this title;

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made;

(6) the Administration approves each loan to be made from such proceeds; and

(7) with respect to each loan made from the proceeds of such debenture, the Administration—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

(i) the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; and

(II) the minimum amount necessary to reduce the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to zero; and

(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(c) Commercial loan interest rate

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section.

(d) Charges for Administration expenses

(1) Level of charges

The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section.

(2) Participation fee

The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 696(3)(B)(i) of this title. Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(3) Development company fee

The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used

to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(e) "Qualified State or local development company" defined; exception for rural company; authority

(1) For purposes of this section, the term ''qualified State or local development company'' means any State or local development company which, as determined by the Administration, has—

(A) a full-time professional staff;

(B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

(2) A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(3) Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under section 636(a) of this title, to service such loans and to charge a reasonable fee for servicing such loans.

(f) Effective date

The fees authorized by subsections (b) and (d) of this section shall apply to financings approved by the Administration on or after October 1, 1996.

(g) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter.

(h) Required actions upon default

(1) Initial actions

Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

(A) take all necessary steps to bring such a loan current; or

(B) implement a formal written deferral agreement.

(2) Purchase or acceleration of debenture

Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the administration[1] shall take all necessary steps to purchase or accelerate the debenture.

[1] So in original. Probably should be capitalized.

(3) Prepayment penalties

With respect to the portion of any project derived from funds set forth in section 696(3) of this title, the Administration—

(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

(i) Two-year waiver of fees

The Administration may not assess or collect any up front guarantee fee with respect to loans made under this subchapter during the 2-year period beginning on October 1, 2002.

(Pub. L. 85–699, title V, § 503, as added Pub. L. 96–302, title I, § 113(a), July 2, 1980, 94 Stat. 837; amended Pub. L. 100–590, title I, §§ 112(c), 114, 117(a), Nov. 3, 1988, 102 Stat. 2996–2998; Pub. L. 101–515, title V, § 8, Nov. 5, 1990, 104 Stat. 2144; Pub. L. 103–403, title II, § 213(1), Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–36, § 6, Oct. 12, 1995, 109 Stat. 297; Pub. L. 104–208, div. D, title II, §§ 202(b)–(e), 203, Sept. 30, 1996, 110 Stat. 3009–735, 3009–736; Pub. L. 105–135, title II, § 222, Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106–554, § 1(a)(9) [title III, § 304], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 107–100, § 6(b), Dec. 21, 2001, 115 Stat. 971; Pub. L. 108–199, div. B, title VI, § 631, Jan. 23, 2004, 118 Stat. 100; Pub. L. 108–205, § 2, Mar. 15, 2004, 118 Stat. 553; Pub. L. 108–217, § 2, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108–306, § 2, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108–447, div. B, title V, div. K, title II, § 204, Dec. 8, 2004, 118 Stat. 2911, 3466.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (b)(7)(A)(ii) and (g), see References in Text note set out under section 661 of this title.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–447, § 204, struck out '', but shall not apply to financings approved by the Administration on or after October 1, 2005'' before period at end.

Pub. L. 108–447, title V, substituted ''October 1, 2005'' for ''October 1, 2004''.

Pub. L. 108–217 substituted ''October 1, 2004'' for ''May 21, 2004''.

Pub. L. 108–205, as amended by Pub. L. 108–306, substituted ''May 21, 2004'' for ''March 15, 2004''.

Pub. L. 108–199 substituted ''March 15, 2004'' for ''October 1, 2003'' before period at end.

2001—Subsec. (b)(7)(A). Pub. L. 107–100, § 6(b)(1), designated existing provisions following ''not exceed'' as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), realigned margins, and added cl. (ii).

Subsec. (i). Pub. L. 107–100, § 6(b)(2), added subsec. (i).

2000—Subsec. (f). Pub. L. 106–554 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The fees authorized by subsections (b) and (c) of this section shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2000.''

1997—Subsec. (b)(7)(A). Pub. L. 105–135, § 222(1), added subpar. (A) and struck out former subpar. (A) which

read as follows: ''assesses and collects a fee, which shall be payable by the borrower, in an amount equal to the lesser of—

''(i) 0.9375 percent per year of the outstanding balance of the loan; or

''(ii) such percentage per year of the outstanding balance of the loan as the Administrator may determine to be necessary to reduce the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to an amount that, taking into consideration any available appropriated funds, would permit the Administration to purchase or guarantee $2,000,000,000 of debentures in fiscal year 1997; and''.

Subsec. (f). Pub. L. 105–135, § 222(2), substituted ''2000'' for ''1997''.

1996—Subsec. (b)(7)(A). Pub. L. 104–208, § 202(b), substituted ''equal to the lesser of—'' for ''equal to 0.125 percent per year of the outstanding balance of the loan'' and added cls. (i) and (ii).

Subsec. (d). Pub. L. 104–208, § 202(c), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section.''

Subsec. (f). Pub. L. 104–208, § 202(d), added subsec. (f).

Subsec. (g). Pub. L. 104–208, § 202(e), added subsec. (g).

Subsec. (h). Pub. L. 104–208, § 203, added subsec. (h).

1995—Subsec. (b)(7). Pub. L. 104–36 added par. (7).

1994—Subsec. (c) to (e). Pub. L. 103–403 made technical amendment to Pub. L. 100–590, § 112(c). See 1988 Amendment note below.

1990—Subsec. (e)(3). Pub. L. 101–515 added par. (3).

1988—Subsec. (a)(2). Pub. L. 100–590, § 114, inserted two provisos that Administration not decline to issue such guarantee when ownership interests of small business concern and of property to be financed with loan are not identical, and that Administrator has determined on case-by-case basis that such ownership interest, guarantee, and loan, will substantially benefit small business concern.

Subsec. (c). Pub. L. 100–590, § 112(c)(B), formerly § 112(c)(1)(B), as amended by Pub. L. 103–403, added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–590, § 112(c)(A), formerly § 112(c)(1)(A), as amended by Pub. L. 103–403, redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–590, § 117, which directed substitution of ''(1) For purposes of'' for ''For purposes of'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2), was executed to subsec. (e) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (e) by Pub. L. 100–590, § 112(c)(1).

Pub. L. 100–590, § 112(c)(A), formerly § 112(c)(1)(A), as amended by Pub. L. 103–403, redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–306, § 2, Sept. 24, 2004, 118 Stat. 1131, provided in part that: ''The amendment made by the preceding sentence [amending section 2 of Pub. L. 108–205, which amended this section] shall take effect as if included in the enactment of the section to which it relates.''

EFFECTIVE DATE OF 2001 AMENDMENT; USE OF FUNDS

Pub. L. 107–100, § 6(d), (e), Dec. 21, 2001, 115 Stat. 972, provided that:

''(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]) of such amendments.

''(e) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 636 of this title] shall become effective on October 1, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Section 112(c)(2) of Pub. L. 100–590, as amended by Pub. L. 101–515, title V, § 3, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755, which provided that the amendment made by paragraph (1), amending this section, was to be repealed on Oct. 1, 1997, was repealed by Pub. L. 103–403, title II, § 213(2), Oct. 22, 1994, 108 Stat. 4184.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

§ 697a. Private debenture sales

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 697 of this title as follows:

(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000.

(2) Of the program levels otherwise authorized by law for each of fiscal years 1987 and 1988, an amount not to exceed $425,000,000.

(3) All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title V, § 504, as added Pub. L. 99–272, title XVIII, § 18008(a), Apr. 7, 1986, 100 Stat. 366; amended Pub. L. 100–72, § 2 July 11, 1987, 101 Stat. 477; Pub. L. 100–590, title I, § 112(a), Nov. 3, 1988, 102 Stat. 2996.)

AMENDMENTS

1988—Pub. L. 100–590 inserted ''Private debenture sales'' as section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) Notwithstanding any other law, rule, or regulation, the Administration shall conduct a pilot program involving the sale to investors, either publicly or by private placement, of debentures guaranteed pursuant to section 697 of this title as follows—

''(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000;

''(2) of the program levels otherwise authorized by law for fiscal year 1987, an amount not to exceed $425,000,000; and

''(3) of the program levels otherwise authorized by law for fiscal year 1988, an amount not to exceed $425,000,000.

''(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

''(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the pilot program authorized in this section,

''(2) any obligation which is an interest in any obligation described in paragraph (1), or

''(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).''

1987—Subsec. (a). Pub. L. 100–72 struck out ''and'' at end of par. (1), substituted ''$425,000,000; and'' for ''$295,000,000.'' in par. (2), and added par. (3).

REGULATIONS

Small Business Administration to promulgate final rules and regulations to implement this section within 60 days of Apr. 7, 1986, see section 18008(d)(2) of Pub. L. 99–272, set out as a note under section 697b of this title.

PILOT PROGRAM REPORT

Section 18008(b) of Pub. L. 99–272 provided that: ''The Administration shall report to the President and the Congress on the conduct of the pilot program established under subsection (a) [enacting this section] not later than 90 days after the date on which the last sale is made pursuant to such subsection in each fiscal year, and unless a report has been made not later than October 1 of 1986 and 1987, the Administration shall make an interim report by such dates.''

§ 697b. Pooling of debentures

(a) Issuance; debentures composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this chapter: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect any fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers; electronic registration

(1) The Administration shall—

(A) provide for a central registration of all trust certificates sold pursuant to this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title V, § 505, as added Pub. L. 99–272, title XVIII, § 18008(c), Apr. 7, 1986, 100 Stat. 367; amended Pub. L. 100–590, title I, § 111(d)(1), (2), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 104–208, div. D, title II, § 205(c), Sept. 30, 1996, 110 Stat. 3009–738.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–208 designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted ''provide for a central registration of all trust certificates sold pursuant to this section;'' for ''provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;'', and added par. (2).

1988—Pub. L. 100–590, § 111(d)(2), inserted ''Pooling of debentures'' as section catchline.

Subsec. (a). Pub. L. 100–590, § 111(d)(1), substituted ''all or a'' for ''all of a''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

RULES AND REGULATIONS FOR IMPLEMENTATION OF CENTRAL REGISTRATION, PILOT PROGRAM AND TRUST CERTIFICATE PROVISIONS; CONSULTATION

Section 18008(d) of Pub. L. 99–272 provided that:

''(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 505(f)(1) of the Small Business Investment Act [15 U.S.C. 697b(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 505(f)(2) of such Act.

''(2) Notwithstanding any law, rule or regulation, within 60 days after the date of enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act [15 U.S.C. 697a, 697b].''

§ 697c. Restrictions on development company assistance

NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this subchapter or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this subchapter; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this subchapter nor shall it include any condition or impose any requirement, directly or indirectly, upon any recipient of assistance under this subchapter: *Provided*, That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

(Pub. L. 85–699, title V, § 506, as added Pub. L. 100–590, title I, § 117(b), Nov. 3, 1988, 102 Stat. 2998.)

§ 697d. Accredited Lenders Program

(a) Establishment

The Administration is authorized to establish an Accredited Lenders Program for qualified State and local development companies that meet the requirements of subsection (b) of this section.

(b) Requirements

The Administration may designate a qualified State or local development company as an accredited lender if such company—

(1) has been an active participant in the Development Company Program authorized by sections 696, 697, and 697a of this title for not less than the preceding 12 months;

(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for such Development Company Program;

(3) has the ability to process, close, and service financing for plant and equipment under such Development Company Program;

(4) has a loss rate on the company's debentures that is reasonable and acceptable to the Administration;

(5) has a history of submitting to the Administration complete and accurate debenture guaranty application packages; and

(6) has demonstrated the ability to serve small business credit needs for financing plant and equipment through the Development Company Program.

(c) Expedited processing of loan applications

The Administration shall develop an expedited procedure for processing a loan application or servicing action submitted by a qualified State or local development company that has been designated as an accredited lender in accordance with subsection (b) of this section.

(d) Suspension or revocation of designation

(1) In general

The designation of a qualified State or local development company as an accredited lender may be suspended or revoked if the Administration determines that—

(A) the development company has not continued to meet the criteria for eligibility under subsection (b) of this section; or

(B) the development company has failed to adhere to the Administration's rules and regulations or is violating any other applicable provision of law.

(2) Effect

A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

(e) "Qualified State or local development company" defined

For purposes of this section, the term ''qualified State or local development company'' has the same meaning as in section 697(e) of this title.

(Pub. L. 85–699, title V, § 507, as added Pub. L. 103–403, title II, § 212(a), Oct. 22, 1994, 108 Stat. 4183.)

REGULATIONS

Section 212(b) of Pub. L. 103–403 provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 22, 1994], the Administration shall promulgate final regulations to carry out this section [enacting this section and provisions set out below].''

REPORT ON IMPLEMENTATION OF PROGRAM

Pub. L. 103–403, title II, § 212(c), Oct. 22, 1994, 108 Stat. 4184, provided that: ''Not later than 1 year after the effective date of regulations promulgated under subsection (b) [set out above], and biennially thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the implementation of this section [enacting this section and provisions set out above]. Such report shall include data on the number of development companies designated as accredited lenders, their debenture guarantee volume, their loss rates, the average processing time on their guarantee applications, and such other information as the Administration deems appropriate.''

§ 697e. Premier Certified Lenders Program

(a) Establishment

The Administration may establish a Premier Certified Lenders Program for certified development companies that meet the requirements of subsection (b) of this section.

(b) Requirements

(1) Application

To be eligible to participate in the Premier Certified Lenders Program established under subsection (a) of this section, a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

(2) Designation

The Administration may designate a certified development company as a premier certified lender—

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

(B) if the company has a history of—

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

(ii) of properly closing section 504 [15 U.S.C. 697a] loans and servicing its loan portfolio;

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

(D) the[1] Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) of this section is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3) Applicability of criteria after designation

The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c) Loss reserve

(1) Establishment

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

(2) Amount

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

(3) Assets

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

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

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

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

(4) Contributions

The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

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

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

[1] So in original. Probably should be preceded by ''if''.

(5) Replenishment

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

(6) Disbursements

(A) In general

The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B) Temporary reduction based on outstanding balance

Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after May 28, 2004, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) Alternative loss reserve

(A) Election

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

(B) Contributions

(i) Ordinary rules inapplicable

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

(ii) Based on loss

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

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

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

(iii) Certification

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

(C) Disbursements

(i) Ordinary rule inapplicable

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

(ii) Excess funds

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

(I) the amount of the loss reserve, over

(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(D) Recontribution

If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

(E) Risk management

If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) Qualified high loss reserve PCL

The term ''qualified high loss reserve PCL'' means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

(i) the amount of the loss reserve of the company is not less than $100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

(G) Specified risk management benchmarks

For purposes of this paragraph, the term ''specified risk management benchmarks'' means the following rates, as determined by the Administrator:

(i) Currency rate.

(ii) Delinquency rate.

(iii) Default rate.

(iv) Liquidation rate.

(v) Loss rate.

(H) Qualified independent auditor

For purposes of this paragraph, the term ''qualified independent auditor'' means any auditor who—

(i) is compensated by the qualified high loss reserve PCL;

(ii) is independent of such PCL; and

(iii) has been approved by the Administrator during the preceding year.

(I) PCLP loan

For purposes of this paragraph, the term ''PCLP loan'' means any loan guaranteed under this section.

(J) Eligible calendar quarter

For purposes of this paragraph, the term ''eligible calendar quarter'' means—

(i) the first calendar quarter that begins after the end of the 90-day period beginning with May 28, 2004; and

(ii) the 7 succeeding calendar quarters.

(K) Calendar quarter

For purposes of this paragraph, the term ''calendar quarter'' means—

(i) the period which begins on January 1 and ends on March 31 of each year;

(ii) the period which begins on April 1 and ends on June 30 of each year;

(iii) the period which begins on July 1 and ends on September 30 of each year; and

(iv) the period which begins on October 1 and ends on December 31 of each year.

(L) Regulations

Not later than 45 days after May 28, 2004, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

(i) the approval of auditors under subparagraph (H); and

(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) Bureau of PCLP Oversight

(A) Establishment

There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

(B) Purpose

The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

(C) Deadline

Not later than 90 days after May 28, 2004—

(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

(d) Sale of certain defaulted loans

(1) Notice

If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) Limitations

The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) Loan approval authority

(1) In general

Notwithstanding section 697(b)(6) of this title, and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) Scope of review

The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 697(a) of this title, but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(f) Review

After the issuance and sale of debentures under this section, the Administration, at intervals not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g) of this section, but such review shall not affect any outstanding debenture guarantee.

(g) Suspension or revocation

The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

(1) has not continued to meet the criteria for eligibility under subsection (b) of this section;

(2) has not established or maintained the loss reserve required under subsection (c) of this section;

(3) is failing to adhere to the Administration's rules and regulations; or

(4) is violating any other applicable provision of law.

(h) Effect of suspension or revocation

A suspension or revocation under subsection (g) of this section shall not affect any outstanding debenture guarantee.

(i) Program goals

Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 697a of this title pursuant to the program authorized under this section.

(j) Report

Not later than 1 year after October 22, 1994, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

(1) the number of certified development companies designated as premier certified lenders;

(2) the debenture guarantee volume of such companies;

(3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and

(4) such other information as the Administration deems appropriate.

(Pub. L. 85–699, title V, § 508, as added and amended Pub. L. 103–403, title II, § 217, Oct. 22, 1994, 108 Stat. 4185; Pub. L. 105–135, title II, § 223(a), Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106–554, § 1(a)(9) [title III, §§ 305, 306], Dec. 21, 2000, 114 Stat. 2763, 2763A–685; Pub. L. 108–232, §§ 2–3(c), May 28, 2004, 118 Stat. 649–652.)

CODIFICATION

May 28, 2004, referred to in subsec. (c)(8)(C), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 108–232, which enacted subsec. (c)(8), to reflect the probable intent of Congress.

October 22, 1994, referred to in subsec. (j), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 103–403, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (b)(2)(C). Pub. L. 108–232, § 3(b), inserted ''(15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) of this section for such company)'' before ''; and''.

Subsec. (b)(2)(D). Pub. L. 108–232, § 3(c)(1), substituted ''subsection (c)'' for ''subsection (c)(2)''.

Subsec. (c)(5). Pub. L. 108–232, § 3(c)(2), struck out ''10 percent'' after ''the premier company's''.

Subsec. (c)(6). Pub. L. 108–232, § 2, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(7), (8). Pub. L. 108–232, § 3(a), added pars. (7) and (8).

2000—Pub. L. 106–554, § 1(a)(9) [title III, § 305], repealed Pub. L. 103–403, § 217(b). See 1994 Amendment note below.

Subsec. (a). Pub. L. 106–554, § 1(a)(9) [title III, § 306(1)], substituted ''The'' for ''On a pilot program basis, the''.

Subsecs. (d), (e). Pub. L. 106–554, § 1(a)(9) [title III, § 306(2), (5)], added heading and text of subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–554, § 1(a)(9) [title III, § 306(2), (3)], redesignated subsec. (e) as (f) and substituted ''subsection (g)'' for ''subsection (f)''. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 106–554, § 1(a)(9) [title III, § 306(2)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 106–554, § 1(a)(9) [title III, § 306(2), (4)], redesignated subsec. (g) as (h) and substituted ''subsection (g)'' for ''subsection (f)''. Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 106–554, § 1(a)(9) [title III, § 306(2)], redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1997—Subsec. (a). Pub. L. 105–135, § 223(a)(1), struck out ''not more than 15'' before ''certified development companies''.

Subsec. (b)(2). Pub. L. 105–135, § 223(a)(2)(A)(i), struck out ''if such company'' after ''premier certified lender'' in introductory provisions.

Subsec. (b)(2)(A), (B). Pub. L. 105–135, § 223(a)(2)(A)(ii), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) has been an active participant in the accredited lenders program during the 12-month period preceding the date on which the company submits an application under paragraph (1), except that, prior to January 1, 1996, the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

''(B) has a history of submitting to the Administration adequately analyzed debenture guarantee application packages; and''.

Subsec. (b)(2)(C). Pub. L. 105–135, § 223(a)(2)(A)(iii), inserted ''if the company'' before ''agrees to assume'' and substituted ''; and'' for period at end.

Subsec. (b)(2)(D). Pub. L. 105–135, § 223(a)(2)(A)(iv), added subpar. (D).

Subsec. (b)(3). Pub. L. 105–135, § 223(a)(2)(B), added par. (3).

Subsec. (c). Pub. L. 105–135, § 223(a)(3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

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

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

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

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

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

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

''(A) 50 percent when a debenture is closed.

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

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

Subsec. (d)(1). Pub. L. 105–135, § 223(a)(4), substituted ''to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans'' for ''to approve loans''.

Subsec. (f). Pub. L. 105–135, § 223(a)(5), substituted ''certified development company'' for ''State or local development company'' in introductory provisions.

Subsec. (g). Pub. L. 105–135, § 223(a)(6), substituted ''revocation'' for ''designation'' in heading.

Subsec. (h). Pub. L. 105–135, § 223(a)(7), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: ''Not later than 180 days after October 22, 1994, the Administration shall promulgate regulations to carry out this section.''

Subsec. (i)(3). Pub. L. 105–135, § 223(a)(8), substituted ''other lenders, specifically comparing default rates and recovery rates on liquidations'' for ''other lenders''.

1994—Pub. L. 103–403, § 217(b), which directed repeal of this section effective Oct. 1, 2000, and was repealed by section 1(a)(9) [title III, § 305] of Pub. L. 106–554, was not executed to reflect the probable intent of Congress and the amendments to this section by section 1(a)(9) [title III, § 306] of Pub. L. 106–554. See Termination Date note below.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

TERMINATION DATE

Section 217(b) of Pub. L. 103–403, as amended by Pub. L. 105–135, title II, § 223(c), Dec. 2, 1997, 111 Stat. 2606, which provided that this section was to be repealed effective Oct. 1, 2000, was repealed by Pub. L. 106–554, § 1(a)(9) [title III, § 305], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.

REGULATIONS

Section 223(b) of Pub. L. 105–135 provided that: ''The Administrator shall—

''(1) not later than 150 days after the date of enactment of this Act [Dec. 2, 1997], promulgate regulations to carry out the amendments made by subsection (a) [amending this section]; and

''(2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a).''

§ 697f. Prepayment of development company debentures

(a) In general

(1) Prepayment authorized

Subject to the requirements set forth in subsection (b) of this section, an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this chapter may, at the election of the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.

(2) Procedure

(A) In general

In making a prepayment under paragraph (1)—

(i) the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

(B) Repurchase premium

(i) In general

For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of—

(I) the unpaid principal balance due on the debenture on the date of prepayment; and

(II) the applicable percentage rate, as determined in accordance with clauses (ii) and (iii).

(ii) Applicable percentage rate

For purposes of clause (i)(II), the applicable percentage rate means—

(I) with respect to a 10-year term loan, 8.5 percent;

(II) with respect to a 15-year term loan, 9.5 percent;

(III) with respect to a 20-year term loan, 10.5 percent; and

(IV) with respect to a 25-year term loan, 11.5 percent.

(iii) Adjustments to applicable percentage rate

The percentage rates described in clause (ii) shall be increased or decreased by the

Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103–317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) Requirements

For purposes of subsection (a) of this section, the requirements of this subsection are that—

(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) of this section under the programs authorized by this subchapter, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 697 of this title, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

(c) No prepayment fees or penalties

No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

(d) Refinancing limitations

(1) In general

The refinancing of a debenture under sections 697a and 697b of this title, in accordance with subsection (b)(2) of this section—

(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 697a and 697b of this title and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 697b of this title.

(2) Job creation

An applicant for refinancing under section 697a of this title of a loan made pursuant to section 697 of this title shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

(3) Loan processing fee

To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) of this section may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

(4) New debentures

Issuers of debentures under subchapter III of this chapter may issue new debentures in accordance with such subchapter in order to prepay existing debentures as authorized in this section.

(5) Preliminary notice

(A) In general

The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this subchapter. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of $1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

(B) "Borrower" defined

For purposes of this paragraph, the term ''borrower'', in the case of a small business investment company or a specialized small business investment company, means ''issuer''.

(6) Final notice

Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

(e) Definitions

For purposes of this section—

(1) the term ''issuer'' means—

(A) the qualified State or local development company that issued a debenture pursuant to section 697 of this title, which has been purchased by the Federal Financing Bank; and

(B) a small business investment company licensed pursuant to section 681 of this title; or

(2) the term ''borrower'' means a small business concern whose loan secures a debenture issued pursuant to section 697 of this title.

(f) Regulations

Not later than 30 days after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to carry out this section.

(g) Authorization

There are authorized to be appropriated $30,000,000 to carry out the provisions of The Small Business Prepayment Penalty Relief Act of 1994.

(Pub. L. 85–699, title V, § 509, as added Pub. L. 103–403, title V, § 503, Oct. 22, 1994, 108 Stat. 4199; amended Pub. L. 104–208, div. D, title II, § 208(h)(1)(H), Sept. 30, 1996, 110 Stat. 3009–747.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a)(1), see References in Text note set out under section 661 of this title.

Public Law 103–317, referred to in subsec. (a)(2)(B)(iii), is Pub. L. 103–317, Aug. 26, 1994, 108 Stat. 1724, known as the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1995. For complete classification of this Act to the Code, see Tables.

The Small Business Prepayment Penalty Relief Act of 1994, referred to in subsec. (g), is title V of Pub. L. 103–403, Oct. 22, 1994, 108 Stat. 4198, which enacted this section and provisions set out as notes under this section and section 661 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 661 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 208(h)(1)(H)(i), struck out at end ''A small business investment company operating under the authority of section 681(d) of this title that has issued a debenture that was purchased by and is held by the Administration, may, under the same terms and conditions, prepay such debenture, and the penalty as provided in this section, and shall thereafter be immediately eligible to apply for additional assistance from the Administration.''

Subsec. (e)(1)(B). Pub. L. 104–208, § 208(h)(1)(H)(ii), substituted ''section 681 of this title'' for ''subsection (c) or (d) of section 681 of this title''.

INTENTION OF CONGRESS

Section 502 of title V of Pub. L. 103–403 provided that:

''(a) IN GENERAL.—The Small Business Administration shall fully utilize the $30,000,000 appropriated in Public Law 103–317 [108 Stat. 1724] to reduce, in accordance with this title [enacting this section and provisions set out as a note under section 661 of this title] and the amendments made by this title, prepayment penalties imposed in connection with debentures issued under—

''(1) section 303 or 503 of the Small Business Investment Act of 1958 [15 U.S.C. 683, 697], which have been purchased by the Federal Financing Bank; and

''(2) title III [probably means title III of Pub. L. 85–699, which is classified to section 681 et seq. of this title] to companies operating under section 301(d) of such Act [15 U.S.C. 681(d)], which have been purchased by the Small Business Administration.

''(b) EQUAL OPPORTUNITY.—In order to provide an equal opportunity to participate in the program authorized under this title, the Small Business Administration shall afford each borrower or issuer of a debenture subject to this title, not less than 45 days to elect to participate and to provide an earnest money deposit. The Administration shall subsequently allow a period of not less than 4 months, during which those borrowers or issuers that elect to participate shall be allowed to complete the prepayment process.

''(c) RESTRICTIONS ON PARTICIPATION.—In no event shall the Small Business Administration—

''(1) allow any borrower or issuer to participate in the program if the borrower or issuer fails to—

''(A) make a timely election and provide the deposit on a timely basis; or

''(B) complete the prepayment process within the required time; or

''(2) allow any borrower or issuer to participate in the program at a percentage rate other than the rate finally determined to be applicable to all other borrowers or issuers with similar terms of years.''

§ 697g. Foreclosure and liquidation of loans

(a) Delegation of authority

In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 697(e) of this title) that meets the eligibility requirements of subsection (b)(1) of this section the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 697 of this title.

(b) Eligibility for delegation

(1) Requirements

A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) of this section if—

(A) the company—

(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

(ii) is participating in the Premier Certified Lenders Program under section 697e of this title; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 697 of this title; and

(B) the company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 697 of this title; and

(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) Confirmation

On request the Administration shall examine the qualifications of any company de-

scribed in subsection (a) of this section to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

(c) Scope of delegated authority

(1) In general

Each qualified State or local development company to which the Administration delegates authority under section[1] (a) may with respect to any loan described in subsection (a) of this section—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 696 of this title; or

(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

(2) Administration approval

(A) Liquidation plan

(i) In general

Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(iii) Routine actions

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

(B) Purchase of indebtedness

(i) In general

In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) Administration action on request

(I) Timing

Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

(II) Notice of no decision

With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

(C) Workout plan

(i) In general

In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(D) Compromise of indebtedness

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable,

[1] So in original. Probably should be ''subsection''.

if the company secures the written approval of the Administration.

(E) Contents of notice of no decision

Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

(3) Conflict of interest

In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) Suspension or revocation of authority

The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

(1) does not meet the requirements of subsection (b)(1) of this section;

(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

(e) Report

(1) In general

Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

(2) Contents

Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

(i) the total cost of the project financed with the loan;

(ii) the total original dollar amount guaranteed by the Administration;

(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(D) A comparison between—

(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.

(Pub. L. 85–699, title V, § 510, as added Pub. L. 106–554, § 1(a)(9) [title III, § 307(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.)

REFERENCES IN TEXT

The Small Business Programs Improvement Act of 1996, referred to in subsec. (b)(1)(A)(i), is Pub. L. 104–208, div. D, Sept. 30, 1996, 110 Stat. 3009–724. Provisions relating to loan liquidation pilot program are contained in section 204 of title II of div. D of Pub. L. 104–208, which is set out as a note under section 695 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 631 of this title and Tables.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

REGULATIONS

Pub. L. 106–554, § 1(a)(9) [title III, § 307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–689, provided that:

''(1) IN GENERAL.—Not later than 150 days after the date of the enactment of this Act [Dec. 21, 2000], the Administrator shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958 [15 U.S.C. 697g], as added by subsection (a) of this section.

''(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1), section 204 of the Small Business Programs Improvement Act of 1996 [Pub. L. 104–208, div. D] (15 U.S.C. 695 note) shall cease to have effect.''

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

Sec.	
701 to 712.	Omitted or Repealed.
712a.	Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies.
713 to 713a–3.	Omitted or Repealed.
713a–4.	Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.
713a–5.	Exemption of Commodity Credit Corporation and its obligations from taxation.
713a–6.	Sale of surplus agricultural commodities to foreign governments.
713a–7.	Exchange of surplus agricultural commodities for reserve stocks of strategic materials.
713a–8.	Omitted.
713a–9.	Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased.
713a–10.	Omitted.
713a–11.	Annual appropriations to reimburse Commodity Credit Corporation for net realized loss.
713a–11a.	Interest prohibited when reimbursing Corporation for net realized losses.
713a–12.	Deposit of net realized gain of Commodity Credit Corporation in Treasury.
713a–13.	Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation.
713a–14.	Dairy export incentive program.
713b.	Repealed.
713c.	Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities.
713c–1.	Annual report to Congress by Federal Surplus Commodities Corporation.
713c–2.	Purchase and distribution of surplus fishery products.
713c–3.	Promotion of the free flow of domestically produced fishery products.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

714.	Creation and purpose of Corporation.
714a.	Location of offices.
714b.	General powers of Corporation.
714c.	Specific powers of Corporation.
714d.	Laws applicable to Corporation.
714e.	Capital stock; amount; interest.
714f.	Use of funds.
714g.	Board of Directors.
714h.	Officers and employees; appointment; duties.
714i.	Cooperation with other governmental agencies.
714j.	Utilization of associations and trade facilities.
714k.	Records; annual report.
714*l*.	Interest of Members of Congress.
714m.	Crimes and offenses.
714n.	Transfer of assets of Commodity Credit Corporation, a Delaware corporation.
714*o*.	Dissolution of Delaware corporation.
714p.	Release of innocent purchasers of converted goods.

SUBCHAPTER I—GENERALLY

§ 701. Omitted

CODIFICATION

Section was section 1 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375, which declared a national emergency and laid down policy objectives for the industrial recovery. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N.Y. 1935, 55 S.Ct. 837, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Orders Nos. 7252 and 7323, set out under sections 703 to 712 of this title.

§§ 702 to 702f. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section 702, act June 16, 1933, ch. 90, § 2, 48 Stat. 195, and sections 702a to 702f, act June 19, 1934, ch. 677, §§ 1–6, 48 Stat. 1183, provided for establishment of agencies to administer the National Industrial Recovery Act during period of emergency and for regulation of employer-employee relations.

§§ 703 to 712. Omitted

CODIFICATION

Sections 703 to 712 of this title were sections 3 to 10, 303, and 304 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N. Y. 1935, 55 S. Ct. 837, 295 U. S. 495, 79 L. Ed. 1570, 97 A. L. R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Order Nos. 7252 and 7323, set out below. Subsequently, sections 303 and 304 of the Act, classified to sections 711 and 712 of this title, were repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. For history of the Commodity Credit Corporation, the Electric Home and Farm Authority, and the Export-Import Bank of Washington, see notes set out under section 712a of this title.

EX. ORD. NO. 7252. TERMINATING THE NATIONAL RECOVERY ADMINISTRATION AND TRANSFERRING CERTAIN AGENCIES AND FUNCTIONS THEREOF TO THE DEPARTMENTS OF COMMERCE AND LABOR

Ex. Ord. No. 7252, Dec. 21, 1935, provided:

1. The National Recovery Administration and the office of Administrator thereof are hereby terminated.

2. The Division of Review, the Division of Business Cooperation, and the Advisory Council, as constituted by Ex. Ord. No. 7075 of June 15, 1935, together with all of their officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Commerce. The Secretary of Commerce is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees engaged in the administration of the agencies transferred by this Order to the Department of Commerce, to exercise and perform in connection with the said agencies the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, to report to the President on all matters relating thereto, and to terminate the functions and duties of the said agencies not later than April 1, 1936.

3. The Consumers' Division, established within the National Recovery Administration by Executive Order No. 7120 of July 30, 1935, together with all of its officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Depart-