Public Law 107–100
107th Congress

An Act

Dec. 21, 2001
[S. 1196]

To amend the Small Business Investment Act of 1958, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Investment Company Amendments Act of 2001.
15 USC 661 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Investment Company Amendments Act of 2001".

SEC. 2. SUBSIDY FEES.

(a) IN GENERAL.—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) in subsection (b)—

(A) by striking "of not more than 1 percent per year";

(B) by inserting "which amount may not exceed 1.38 percent per year, and" before "which shall be paid"; and

(C) by striking "September 30, 2000" and inserting "September 30, 2001"; and

(2) in subsection (g)(2)—

(A) by striking "of not more than 1 percent per year";

(B) by inserting "which amount may not exceed 1.38 percent per year, and" before "which shall be paid"; and

(C) by striking "September 30, 2000" and inserting "September 30, 2001".

15 USC 683 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 2001.

SEC. 3. CONFLICTS OF INTEREST.

Section 312 of the Small Business Investment Act of 1958 (15 U.S.C. 687d) is amended by striking "(including disclosure in the locality most directly affected by the transaction)".

SEC. 4. PENALTIES FOR FALSE STATEMENTS.

(a) CRIMINAL PENALTIES.—Section 1014 of title 18, United States Code, is amended by inserting ", as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act" after "small business investment company".

(b) CIVIL PENALTIES.—Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) in subsection (c)—

(A) in paragraph (1), by striking "or" at the end;

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(B) in paragraph (2)—

(i) by striking "1341;" and inserting "1341"; and

(ii) by striking "institution." and inserting "institution; or";

(C) by inserting immediately after paragraph (2) the following:

"(3) section 16(a) of the Small Business Act (15 U.S.C. 645(a)).";; and

(D) by striking "This section shall" and inserting the following:

"(d) EFFECTIVE DATE.—This section shall".

SEC. 5. REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIALS.

Section 313 of the Small Business Investment Act of 1958 (15 U.S.C. 687e) is amended to read as follows:

"SEC. 313. 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 Act;

"(II) any regulation issued under this Act; 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), 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); 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.

Deadline.

"(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), 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).

"(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, United States Code.

"(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. Deadline.

"(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.

Deadline.

"(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)), 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, United States Code.

"(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, United States Code; 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, United States Code.

"(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.".

SEC. 6. REDUCTION OF FEES.

(a) TWO-YEAR REDUCTION OF SECTION 7(a) FEES.—

(1) GUARANTEE FEES.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by adding at the end the following:

"(C) TWO-YEAR REDUCTION IN FEES.—With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

"(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.".

(2) ANNUAL FEES.—Section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)) is amended by adding at the end the following: "With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.".

(b) REDUCTION OF SECTION 504 FEES.—Section 503 of the Small Business Investment Act of 1958 (15 U.S.C. 697) is amended—

(1) in subsection (b)(7)(A)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving the margins 2 ems to the right;

(B) by striking "not exceed the lesser" and inserting "not exceed—

"(i) the lesser"; and

(C) by adding at the end the following:

"(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"; and

(2) by adding at the end the following:

"(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 title during the 2-year period beginning on October 1, 2002.".

(c) BUDGETARY TREATMENT OF LOANS AND FINANCINGS.—Assistance made available under any loan made or approved by the Small Business Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or financings made under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), during the 2-year period beginning on October 1, 2002, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 only. 15 USC 636 note.

15 USC 697 note.

(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958, 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) of such amendments.

15 USC 697 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 2002.

Approved December 21, 2001.

LEGISLATIVE HISTORY—S. 1196:

SENATE REPORTS: No. 107–55 (Comm. on Small Business and Entrepreneurship).
CONGRESSIONAL RECORD, Vol. 147 (2001):
Nov. 15, considered and passed Senate.
Nov. 16, considered and passed House, amended.
Dec. 7, Senate concurred in House amendment with an amendment.
Dec. 11, House concurred in Senate amendment.